D-369 National Bituminous Coal Wage Agreement of 1950 ..... 1052a
As Amended January 18, 1951 ..... 1076a
As Amended September 29, 1952 .. 1081a
As Amended Effective Sept. 1, 1955 1091a
As Amended Effective Oct. 1, 1956 1098a
As Amended Effective Dec. 1, 1958 1103a
D-395 Table 1. United States Consumption of Energy Fuels and Water Power in Percent of B.T.U.'s, 1940-1964 (Data Plotted on Chart 1.) ..... 1115a
Table 4. United States Total Production of Bituminous Coal in Percent, by Size of Annual Output, 1940-1964 (Data Plotted on Chart 4.) ..... 1117a
Table 6. Number of Bituminous Coal Mines, by Size of Annual Output in The United States, 1940-1964 (Data Plotted on Chart 7.) ..... 1121a
Table B. Salient Statistics on Bituminous Coal in the United States, 1940-1964 ..... 1123a

In The

# UNITED STATES DISTRICT COURT

Eastern District of Tennessee
Southern Division

Civil Action No. 3667

GEORGE RAMSEY, et al; ELMER STUDER, WALTER H. STUDER and DALE F. STUDER, d/b/a Walden Ridge Coal Company; LEON NUNLEY, d/b/a Leon Nunley Coal Company; PAUL GIBBS, d/b/a Paul Gibbs Coal Company; LOIS HALL TRAVIS, Admnx., Est. W. J. Travis, and J. H. GRAHAM, d/b/a Ninth West Coal Co.; A & R. COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G Coal Co.; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Admnx. Est. of W. J. Travis, d/b/a M & T Coal Company; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a Edward Nunley Coal Co.; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a Tracy City Coal Co.; HENRY WILLIS FLYNN, d/b/a Willis Flynn Coal Co.; H. W. FLYNN COAL CO., INC.; HOWARD HIGGINS, d/b/a Howard Higgins Coal Co.; HOWARD HIGGINS COAL COMPANY, INC.; JOHN T. STEPHENSON and HOWARD STEPHENSON, d/b/a Stephenson Brothers Coal Company; MARSHALL MEEKS, d/b/a Meeks Coal Company,

*Plaintiffs*,

v.

UNITED MINE WORKERS OF AMERICA,

*Defendant*.

## RELEVANT DOCKET ENTRIES

January 6, 1961 Complaint filed, summons issued and mailed to U. S. Marshal and to the Secretary of State for service.

January 17, 1961 Summons to United Mine Workers of America and John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America Welfare & Retirement Fund, returned executed and filed.

February 8, 1961 Motion of defendants, John L. Lewis, Henry G. Schmidt and Josephine Roche, individually and as Trustees of the United Mine Workers of America Welfare and Retirement Fund, to dismiss action against them or in lieu thereof to quash the return of service of summons and complaint, filed. Memorandum in support thereof filed. Service of copies made by counsel.

February 28, 1961 Motion of plaintiffs to amend complaint, filed. Service of copies made by counsel.

March 2, 1961 Memorandum, Darr, D.J., on motion of Trustees of United Mine Workers of America Welfare and Retirement Fund of 1950 to dismiss, or in lieu thereof to quash service of summons filed. (Motion granted and case dismissed as to Trustees of the UMWA Welfare and Retirement Fund of 1950; order accordingly.) Service of copies made by clerk by mail to all attorneys of record.

March 8, 1961 ORDER, DARR, D.J., that the motion of defendants, John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the UMWA Welfare & Retirement Fund of 1950, be, and the same hereby is granted, and this case is dismissed as to these defendants, filed. C.O. Bk. 11, p. 405. Service of copies made by clerk to all counsel.

Docket Entries (No. 3667)

March 30, 1961 Answer of defendant, United Mine Workers of America, filed. Service of copies made by counsel.

June 14, 1961 ORDER, DARR, D.J., that a voluntary dismissal, without prejudice, be entered herein as to defendants, WEST KENTUCKY COAL CO., INC., CYRUS W. EATON, TENNESSEE VALLEY AUTHORITY, G. O. WESSENAUER, Manager of Power for the Tennessee Valley Authority, and LOUISVILLE & NASHVILLE RAILWAY CO., INC., and plaintiffs, are hereby granted 30 days within which to file amended complaint as to the UNITED MINE WORKERS OF AMERICA, filed. C.O. Bk. 12, p. 47-47a. Service of copies made by clerk by mail to all counsel of record.

July 7, 1961 Amended Complaint filed. Service of copy made by clerk by mail.

August 14, 1961 Answer of United Mine Workers of America filed. Service of copies made by counsel.

June 22, 1962 Motion to intervene as parties plaintiff, filed, together with copy of amended complaint. Service by counsel.

September 20, 1962 ORDER, WILSON, D.J., allowing numerous parties to intervene as parties plaintiff in this cause filed. C.O. Bk. 14, p. 53. Service of copies by clerk.

January 15, 1964 Motion of plaintiffs for permission to amend complaint, with brief in support thereof, filed. Service by counsel.

February 1, 1964 Motion of plaintiffs to amend complaint to provide a more specific designation of the plaintiffs and intervening plaintiffs and the amount sued for by each, and to dismiss the complaint as to certain plaintiffs and intervening plaintiffs and brief in support thereof filed. Service by counsel.

Docket Entries (No. 3667)

June 22, 1964 ORDER, WILSON, D.J., on pending motions: continuing trial of this case from November 23, 1964 and re-set for trial on May 17, 1965; Action of the Court upon defendant's motion with respect to the plaintiff's failure to respond to interrogatories is deferred pending receipt of further response by defendant; Action deferred on defendant's motion for summary judgment; allowing plaintiffs' motion to amend complaint; allowing plaintiffs' motion to withdraw its former motion for summary judgment; allowing defendant until June 16, 1964 to file further response to plaintiffs' motion to amend regarding identity of plaintiffs to this cause and the amounts sued for; allowing plaintiffs' motion to substitute Lois Hall Travis, Administratrix of the Estate of Woodrow J. Travis, for the said Woodrow J. Travis; and that stipulation of parties with respect to plaintiffs' motion to be allowed to read the testimony of witnesses in another cause in the trial of this cause be filed on or before June 16, 1964, filed. Entered C.O. Bk. 20, p. 126.

September 15, 1964 ORDER, WILSON, D.J., that plaintiffs' motion to more specifically designate the plaintiffs and the amounts sued for is allowed and the case is dismissed with prejudice as to all plaintiffs not so designated in plaintiffs' motion of 2/1/64; defendant's motion for an order with respect to plaintiffs' answers to the defendant's interrogatories is overruled; that plaintiffs file a revised complaint to be entered within 10 days of this date, defendant will have 30 days thereafter to amend its answer should it elect to do so, entered C.O. Bk. 20, p. 411, and filed. Service of copies by clerk to all counsel of record.

September 18, 1964 Revised complaint filed. Service by counsel.

Docket Entries (No. 3667)

October 19, 1964 Answer of the defendant, U.M.W.A. to the revised complaint filed. Service by counsel.

November 25, 1964 Motion of plaintiffs to supplement complaint, with brief in support, filed. Service by counsel.

January 5, 1965 ORDER, WILSON, D.J., allowing plaintiffs' motion to be allowed to supplement their complaint and the supplemental complaint to be filed within not more than 10 days from this date and defendant will be allowed 20 days after receiving copy of supplemental complaint within which to answer or otherwise respond, entered C.O. Bk. 21, p. 373 and filed. Service by clerk.

January 6, 1965 Supplemental complaint filed by plaintiffs. Service by counsel.

August 25, 1965 Stipulation of counsel that either party may introduce certain evidence as set out in stipulation filed.

September 20, 1965 Pretrial Order filed. Service by counsel.

September 21, 1965 Came the parties in person and by counsel and the trial of this case to the Court was commenced. Part of plaintiffs' proof was presented and Court was adjourned to 9:00 a.m., Wednesday, Sept. 22, 1965. Wilson, D.J. Entered C.O. Bk. 24, p. 128.

October 11, 1965 Came the same parties and counsel as of yesterday and the trial was resumed. Plaintiffs' proof completed. Counsel for defendant, Mr. E. H. Rayson, made motion for judgment on behalf of U.M.W. as to Waldens Ridge Coal Co. and Court sustained motion. Motion by defendant, U.M.W., to dismiss action insofar as claim of George Ramsey, and to

Docket Entries (No. 3667)

enter judgment in favor of defendant. Decision reserved. Motion renewed by U.M.W. made prior to pretrial that actions be dismissed with prejudice as to various plaintiffs. Decision reserved. Motion by U.M.W. to strike evidence concerning coal sales to T.V.A. and to other markets; to strike evidence of activities engaged in by unknown persons, identified outsiders, union members, and local union officers; to strike all evidence relating to the mere presence of Dist. 19, U.M.W. Ruling by Court on last 3 motions reserved. Motion by U.M.W. to dismiss as to each plaintiff re Statute of Limitations, ruling reserved. Respited to 9 a.m., 10/13/65. C.O. Bk. 24, p. 207.

October 26, 1965 Came the same parties and counsel and trial resumed. Defendant's proof completed. Rebuttal by plaintiffs, sur-rebuttal by defendant. Defendant renewed motions to dismiss, to strike evidence, etc. and were taken under advisement. Argued by both counsel. Case taken under advisement by Court. Plaintiffs allowed 4 weeks to file brief, defendant 4 weeks thereafter and plaintiffs 2 weeks to respond. C.O. Bk. 24, p. 263.

November 26, 1965 Transcript of proceedings in 25 volumes filed.

March 4, 1967 OPINION, WILSON, D.J., that the defendant, United Mine Workers Union, did not conspire to violate provisions of the Sherman Antitrust Act and Clayton Act by trying to force the small coal mine operators out of business and that this action should be dismissed, filed. Service to all counsel of record.

March 9, 1967 JUDGMENT ORDER, WILSON, D.J., according to opinion, dismissing the plaintiffs' action against the U.M.W.A. under the Sherman Act and Clayton Act, with prejudice as to each party and they

shall take nothing by their action and the costs are taxed against said plaintiffs and in favor of the defendant, U.M.W.A., entered C.O. Bk. 27, p. 398 and filed. Service by clerk of true copies to all counsel of record.

March 23, 1967 ORDER, WILSON, D. J., that single trial record shall be transmitted to the Court of Appeals which shall serve as the trial record on appeals in both 3667 and 4189, the trial transcript being numbered serially with two numbers, one for each of the two cases, and the exhibits bearing the stamp of filing in the trial of Civil Action No. 3667 also constituting exhibits in Civil Action No. 4189, filed. Entered C.O. Bk. 27, p. 472. Service by clerk to all counsel of record.

March 23, 1967 Notice of Appeal filed. Service by clerk to all counsel of record.

March 23, 1967 Appeal bond in amount of $250.00 filed.

April 5, 1967 Copy of docket entries mailed to attorneys of record by clerk.

In The

# UNITED STATES DISTRICT COURT

Eastern District of Tennessee
Southern Division

Civil Action No. 4189

TENNESSEE PRODUCTS & CHEMICAL CORPORATION,
*Plaintiff*,

v.

UNITED MINE WORKERS OF AMERICA,
*Defendant*.

## RELEVANT DOCKET ENTRIES

October 12, 1963 Complaint filed.

October 14, 1963 Summons as to United Mine Workers of America issued and mailed to Secretary of State, Nashville, Tennessee, together with two copies of the complaint and check in the amount of $2.00 for service.

October 14, 1963 Summons as to West Kentucky Coal Company issued and mailed to U. S. Marshal, Knoxville, Tennessee, with copy of complaint attached.

October 22, 1963 Summons returned executed as to West Ky. Coal Co. and filed. W.J. Evins, Jr. DUSM.

October 22, 1963 Summons returned executed by Secretary of State as to U.M.W.A. and filed.

Docket Entries (No. 4189)

November 15, 1963 Separate answer of defendant, West Kentucky Coal Co., filed. Service by counsel.

October 30, 1964 Answer of defendant, U.M.W.A., to complaint filed. Service by counsel.

September 14, 1966 Plaintiff's Motion for Leave to File Supplemental Complaint, with the proposed supplemental complaint, and with brief in support thereof filed. Service by counsel.

October 21, 1966 ORDER, WILSON, D.J. (COPY OF ORDER IN CASE NO. 4178) If negotiations now in progress are consummated for disposition of the claim of the plaintiff against the defendant, West Kentucky Coal Co. in 4189, the plaintiffs' counsel will recommend that the liability issue in 4189 be submitted to the Court for decision upon the record in the case No. 3667, which is presently before the Court for decision. If disposition is not made within 30 days the case will be set for pretrial at 2 p.m. on Monday, Nov. 21, 1966, and the motion to consolidate becomes moot, entered C.O. Bk. 26, p. 630 and filed. Service by clerk to all counsel of record.

November 23, 1966 Plaintiff's Motion for a voluntary dismissal of the defendant, West Kentucky Coal Company, filed. Service by counsel.

November 23, 1966 LODGED: Order dismissing defendant, West Kentucky Coal Co. Service of copies by counsel to all counsel of record.

December 5, 1966 ORDER, WILSON, D.J., by agreement of counsel, dismissing defendant, West Kentucky Coal Co., as a defendant from this action, without prejudice and without costs, and the defendant, U.M.W.A., is allowed 15 days to amend its answer so as to assert any defense alleged to have arisen by reason of the settlement between the Tenn. Products Co.

and West Kentucky Coal Co., entered C.O. Bk. 27, p. 66 and filed. Service by clerk to all counsel of record.

December 5, 1966 ORDER, WILSON, D.J., allowing plaintiff to amend its complaint to seek additional damage through the period ending Dec. 31, 1965, and the defendant is allowed 15 days to answer the complaint as amended, entered C.O. Bk. 27, p. 67, and filed. Service by clerk to all counsel of record.

December 5, 1966 Plaintiff's Supplemental Complaint, requesting trial by jury, filed. Service by counsel.

December 5, 1966 ORDER, WILSON, D.J., by agreement of counsel, stipulating that this case is submitted to the Court for adjudication and decision by the Court, without a jury, upon all issues, upon certain records, transcript, etc., in case No. 3667, entered C.O. Bk. 27, p. 68 and filed. Service by clerk to all counsel of record.

December 20, 1966 Defendant's amendment to its answer filed. Service by counsel.

December 29, 1966 Plaintiff's Answer to affirmative defense contained in the answer of the defendant filed. Service by counsel.

December 29, 1966 Plaintiff's Motion for an order under Rule 56(d) with respect to the affirmative defense contained in the amendment to answer of U.M.W.A. with Affidavit of J. A. Rowntree and with brief in support thereof filed. Service by counsel.

January 16, 1967 Motion of defendant, U.M.W.A. for summary judgment, with brief in support thereof filed. Service by counsel.

March 4, 1967 OPINION, WILSON, D.J., deciding all issues in case No. 3667 but only the issue of liability in this case No. 4189, that the United Mine

Workers Union of America did not violate the provisions of the Sherman Antitrust Act and that there was no conspiracy on the part of the union to violate said provisions, Sections 1 and 2 having to do with monopolistic practices, filed. Service by secretary to the judge and by clerk to all counsel of record.

March 9, 1967 FINAL JUDGMENT, WILSON, D.J., dismissing this action with prejudice and taxing costs unto the plaintiff entered C.O. Bk. 27, p. 396 and filed. Service by clerk of true copies to counsel of record.

March 23, 1967 ORDER, WILSON, D.J., that single trial record shall be transmitted to the Court of Appeals which shall serve as the trial record on appeals in both 3667 and 4189, the trial transcript being numbered serially with two numbers, one for each of the two cases, and the exhibits bearing the stamp of filing in the trial of Civil Action No. 3667 also constituting exhibits in Civil Action No. 4189, filed. Entered C.O. Bk. 27, p. 472. Service by clerk to all counsel of record.

March 23, 1967 Notice of Appeal filed. Service by clerk to all counsel of record.

March 23, 1967 Appeal bond in the amount of $250.00 filed.

Transcript of proceedings in 25 volumes (3667 and 4189).

[Caption Omitted]

[Civil Action No. 3667]

## PRE-TRIAL ORDER

(Filed September 20, 1965)

This matter came on to be further heard before Frank W. Wilson, United States District Judge, pursuant to Rule 16 of the Federal Rules of Civil Procedure.

### NATURE OF THE ACTION

This is an action for damages alleged to have been sustained by the plaintiffs by reason of an alleged violation of Title 15 USC, Secs. 1 and 2, commonly referred to as the Sherman Antitrust Act. Jurisdiction is based on Title 15 USC, Secs. 15 and 26.

### THEORY OF PLAINTIFFS:

That the defendant, the UMW, has knowingly and continuously engaged, and is now engaged on the date of the filing of the Amended Complaint, in a wrongful and unlawful conspiracy with business groups, to control the coal industry in the Southern Appalachian coal fields, to eliminate and suppress competition, to boycott these plaintiffs and members of this class, to control the market, to fix and control prices and otherwise create a monopoly.

That this wrongful and unlawful conspiracy has been, and now is, in unreasonable restraint of interstate trade and commerce, has a substantial economical effect on interstate commerce and is in violation of Title 15 USC,

Sections 1 and 2, all to the damage of the hereinabove named plaintiffs, all members of the class, and to the public, in that widespread unemployment has resulted to such an extent that the area has been declared a "depressed area."

That the background, nature and purposes of the conspiracy were as follows:

A. Background of the Conspiracy.

Prior to 1950, Pittsburgh Consolidation Coal Company (presently Consolidation Coal Company) in the north, and Island Creek Coal Company, in the south, dominated and to a large extent controlled the production and marketing of coal in the Appalachian Region of the country. This domination and control was threatened by the rise of small, independent producers following World War II. After World War II the economics of the bituminous coal industry became unstable by reason of the fact that there was more coal being produced than the markets required; before 1950 the major coal producers and the Union were in agreement that the major problem of the industry was over-production and that the growth of small, independent and non-Union producers was contributing to the problem; the major companies and the Union disagreed on how the problem should be handled in the period immediately subsequent to World War II; on its side the Union was contending that the answer was to cut down on the working time of all producers; the UMW urged a three-day work week; for many months before the 1950 contract was signed the UMW took the initiative on this question and directed the working time of the men in the industry, the Union officials setting on some weeks three-day work weeks and at other times

no-day work weeks; domination of the man in the industry was an essential part of the Union's effort to dictate the economics of the industry and this domination was interfered with by the passage of the new Taft-Hartley Act; the Union's efforts to maintain closed shops and maintain a Union controlled Welfare Fund were challenged and in some instances were defeated in the courts by the major coal companies; the major coal companies were opposed to the UMW's dictating the work time of the men in the industry because it cut into their profits.

B. Formation of the Conspiracy.

A marked change occurred in the relations between the UMW and the major coal companies in 1950, as disclosed in their bargaining relations before and after that year; the express understanding at the time of the signing of the 1950 National Bituminous Coal Wage Agreement was that the major coal companies, themselves, were to decide on the working time for their employees; this was a surrender on the part of the UMW of its previous policy of seeking to control the economics of the industry by controlling the working time; the understanding was that the problem of stabilizing the economics of the industry, the problem recognized by both the UMW and the major coal companies, was to be taken care of by eliminating the smaller and weaker companies in great numbers, leaving the industry to the major coal companies alone. Subsequently, other coal combines came into this group of major companies besides Consolidation Coal Company and Island Creek Coal Company. These included Peabody Coal Company, the Pittston Company (which absorbed Clinchfield Coal Company), West Kentucky Coal Company (which absorbed Nashville Coal Company) and Pittsburg-Midway Coal Company.

C. Use of the National Bituminous Coal Wage Agreement in the Conspiracy and Evasion of the Taft-Hartley Act.

The conspiracy involved the use of the National Bituminous Coal Wage Agreement of 1950, and its successive amendments as an instrument in accomplishing the purposes of the conspiracy; the accomplishment of the purposes of the conspiracy was furthered by the domination of the UMW over the men in the industry and in 1950, by the express statement of the representatives of the major coal companies the Welfare Fund was turned over to the Union's responsibility and rather than opposing the UMW's efforts to evade the Taft-Hartley Act as they had before, the major coal companies have fostered the UMW's domination of the men in the industry so that the terms of the National Bituminous Coal Wage Agreement would be imposed upon the small mines; by successive amendments to the uniform National Bituminous Coal Wage Agreement's terms the wage scale and the Welfare Fund royalties per ton were raised to exceedingly high levels; the mechanization program of the major coal companies was to go ahead rapidly and the successive increases in the wage scale and Welfare Fund payments were designed and tailored to meet the abilities of the major coal companies to mechanize and not have their profits affected by the increasing labor costs in the successive amendments; the successive amendments to the labor contract were made after careful consideration of the abilities of the major coal companies to make the increases without affecting their profits; the Union had no concern as to whether the weaker companies could pay; the UMW displayed its knowledge that the weaker companies could not pay and that they would fall by the

wayside by reason of the increased terms; the Union favored the taking over of the industry by the combines of coal producers and the Union worked toward this end; the campaign to impose the wage contracts upon the smaller, independent and non-Union mines was intense after 1950; in areas of strong resistance mobs and terrorism were used; pensioners under the Welfare Fund were organized into bands which had as their purpose the imposition of the uniform National Bituminous Coal Wage Agreement upon the smaller and non-Union companies; the paying of Welfare Fund benefits to men in the industry depended upon the retention of membership in good standing in the UMW, certified to by local, District and International Union officials; the enticement of benefits under this Fund was held out to the men in the industry by the Union as being under UMW control contributing to the domination of the men in the coal fields by UMW; the finances of the Union and the Finances of the major coal companies have been used to further the drive to bring all production under the National Bituminous Coal Wage Agreement; one or more major coal companies have assisted in crushing the opposition of the principal competitor of the UMW in the bituminous coal labor fields; the result of this conspiracy and these activities has been that large numbers of small companies have been driven out of the industry and that thousands of men are put out of the industry they cease to participate in Welfare Fund Benefits and the Fund remains as a source of benefit for the employees only of those companies that survive.

D. Use of Boycotts.

To accelerate the demise of the smaller companies devices were inserted into later amendments of the

National Bituminous Coal Wage Agreement to further restrain their trade; companies which could not afford to pay the wage scale in terms of the contract were barred from operating on the lands of signatories to the contract; the major companies have acquired great tracts of the coal lands of the country and there is little good coal land left for the small companies to operate upon; the small companies were prohibited from selling coal to the signatories to the contract, including the major companies which supplied coal to the large markets under large contracts.

E. The TVA Market.

The development of the Tennessee Valley Authority as the principal coal purchaser of the entire country called the attention of the conspirators to the Southern Appalachian region when TVA opened up many of its coal-using generating units in 1954, 1955 and 1956; in 1955 the conspirators manifested their intent and purpose to take over the TVA market by working together with the Secretary of Labor to obtain a determination of a minimum wage in the bituminous coal industry under the Walsh-Healey Act while such joint activity was not itself a violation of the anti-trust law, the purpose and character of other activities of the conspirators is manifested by these particular activities and statements made in connection therewith; the purpose was to drive out of the government market, particularly the TVA market, the small coal producers; because contracts for less than $10,000.00 were exempted from the minimum wage determination, small companies were able to ship coal on TVA spot orders; the conspirators further showed their purpose and state of mind by setting about to eliminate or drastically reduce the spot market of

TVA; in addition, the conspirators adopted the practice of predatory pricing to drive the TVA coal market price down to a price which a small producer could not meet at a profit; in this phase of the campaign the West Kentucky Coal Company and its subsidiary, Nashville Coal Company, took the most prominent part; the Union had over $25,000,000.00 of risk capital invested in these companies; large amounts of tonnage were dumped upon the coal market of TVA at constantly reduced prices; the TVA coal market became a depressed market because of these activities. Assisted by defendants' interference with and suppression of production by plaintiffs by acts of violence and intimidation in the southeastern Tennessee coal fields, major coal combines of Western Kentucky, including West Kentucky Coal Company and Peabody Coal Company, took measures to obtain a reduced rail rate for coal from Western Kentucky to Widow's Creek Steam Plant of TVA and succeeded in taking over a substantial part of that market, which was plaintiffs' principal market.

F. Enforcement of the National Bituminous Coal Wage Agreement.

Companies which survived the other onslaughts of the conspiracy have been killed off by lawsuits brought by the Trustees of the Welfare Fund; prior to 1958 some three or four cases were brought by the Trustees against some of the larger producers in the area; cases against the smaller producers were commenced in 1958 and the following period; some forty-six of these cases were brought against the small companies of the area in the State of Tennessee in 1958 and 1959; the amount sued for by the Trustees was sufficient to wipe out such companies.

G.

The Union in carrying on the foregoing activities pursuant to its understanding and agreement with the major coal companies was not acting alone to further its own interests as an organization of wage earners but was aiding, abetting and cooperating with business men in an effort to restrain trade of small coal companies; the conspiracy involved boycotts and a purpose to stabilize the prices of coal in the industry; the practices used pursuant to the conspiracy particularly the imposition of the constantly increasing terms of the National Bituminous Coal Wage Agreement upon the small coal companies, and the price-cutting practices of the conspirators on the markets supplied by plaintiffs were unreasonable. That the conspiracy manifested itself in the Southeastern Tennessee coal field by a squeeze applied to the local operators from the market side and the labor side. While large producers in other fields, including companies owned by defendant, applied a downward pressure on the price in the principal market of the local producers and effectively put a low and dropping ceiling on that price, the defendant raised the labor costs of the local producers by forcing terms in labor contracts that were unreasonable in this field and by interferences with production, some of the latter being by design of the International Union and some being the necessary consequences of the straight-jacket placed upon this field by the labor contracts forced onto the field by the defendant.

That, while there will be direct proof of phases of the conspiracy, plaintiffs rely on the rule that conspiracies can seldom be proved by direct evidence but conspiracy may be inferred from the acts and course of conduct of the parties.

That by reason of the wrongful and unlawful conspiracy the plaintiffs have suffered damages and injuries in the following ways and manner: (1) they have been forced out of business; (2) they have been forced to operate their businesses notwithstanding an agreement by and between the defendant and the large operators designed to force them out of business; (3) they have been forced by the agreement to expend much in monies otherwise unnecessary; (4) they have lost many contracts that they otherwise would have obtained; (5) they have lost much in profit that they otherwise would have made; (6) they have been forced to sell their coal at a price far less than necessary to realize a reasonable profit; their actual damages amount to $5,050,000.00 and by virtue of Title 15 USC, Section 15, they are entitled to threefold damages in the amount of $15,150,000.00 plus attorneys' fees.

## THEORY OF UMWA

### I.

Throughout the period pertinent to the case at bar UMW has acted to further the best interests of its members through arms-length bargaining with representatives of coal operators within the framework of federal labor laws. Its objectives in negotiating and executing the various wage agreements have been to achieve a uniform living wage, decent and safe working conditions, and various fringe benefits. UMW has made no agreement with any coal operator at any time to impose a wage agreement on other operators. Its wage agreements have been a result of its own policies, and not by agreement with all, part of, or any of the coal operators of one unit to seek the same wages or benefits from other operators.

II.

UMW Objectives and Policy

From its origin as a labor union in 1890, UMW has endeavored to unite in one organization all workers employed in and around coal mines, coal washeries, coal processing plants and coke ovens and has sought to obtain a uniform wage scale for all its members so employed. Its unionization program conforms with *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209—*a Sherman anti-trust case*— that

> "To render [a labor union] at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the community, united, *because, in the competition between employees, they are bound to be affected by the standard of the wages of their trade* in the neighborhood."[1]

UMW has strenuously striven to rid the coal mining industry of substandard and hazardous employment conditions in coal mining operations. Its motive in unionizing non-union employees is to eliminate adverse effects on its members from competitive advantages, based on labor standards. *Apex Hosiery Co. v. Leader*, 310 U.S. 469 approves. A union's liability under *Sherman* it was said in *U. S. v. Hutcheson*, 312 U.S. 219, 231, "is to be determined only by reading the Sherman Law and Section 20 of the Clayton Act and Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct."

---

[1] All emphases herein are supplied, unless otherwise indicated.

And, while in *Allen Bradley Co. v. Local Union, No. 3*, 325 U.S. 797, the Supreme Court condemned union "activities for the purpose of 'employer-help' in controlling markets and prices" (p. 808), it declared that *Sherman's* policy was "to preserve a competitive business economy" with "the rights of labor to organize to better its conditions through the agency of collective bargaining" (p. 806). Reaffirmance of these principles is found in the recent *UMWA v. Pennington*, ... U.S. ..., 14 L. ed 2d 626, 633 (June 7, 1965) where it is professed that, "We think it beyond question that a union may conclude a wage agreement for the multi-employer bargaining unit without violating the antitrust laws and that it may as a matter of policy . . . seek the same wages from other employers."

UMW strives for national equality of compensation for its members because: *First*, a miner should receive the same wage for his labor whether he happens to work in the North, South, or West, and regardless of the particular economic circumstances of an individual operator. The geographical or economic situation of an operator does not alter the labor the miner expends or the wherewithal that he and his family need in order to live decently. *Second*, wage differentials should not be the basis for according to one operator a competitive advantage over another. No operator is in a durable position to pay a higher wage than his competitor because of the latter's ability to offer a lower price based on a lower wage. Removal of differences in labor standards as an element of competition is therefore at the core of UMW policy.

Unilaterally "a union may adopt a uniform wage policy and seek vigorously to implement it" even if some em-

ployers cannot effectively compete if required to pay the union-demanded wage scale. Indeed, it "need not gear its wage demands to those which the weakest units in the industry can afford to pay" and the inability of those who cannot compete "is not alone sufficient evidence to maintain a union-employer conspiracy charge under the Sherman Act" (*Pennington*, 14 L. ed 2d 626, 633, fn. 2).

UMW's policy is not to subsidize marginal operators through substandard labor conditions. The law does not require it; national labor policy rejects it.

Moreover, uniformity of wage and working conditions contemplates the elimination of wage differentials; yet, "elimination of price competition based on differences in labor standards" is not the "kind of curtailment of price competition" which *Sherman* proscribes. *Apex Hosiery Co. v. Leader*, 310 U.S. 503-04.

III.

UMW Denies Any Conspiracy. The 1950 Agreement Resulted From Good Faith Collective Bargaining, Obedient To Mandates Of Federal Court Injunctive Orders.

UMW denies that (1) it entered into any contract or joined in any combination or conspiracy in restraint of trade or commerce in violation of the *Sherman Act* and (2) it has monopolized or attempted to monopolize or that it combined or conspired with any other person or persons or group of persons to monopolize any part of the trade or commerce among the several states or with foreign nations.

The 1950 Agreement resulted from arms-length collective bargaining over a long period of time during

which UMW was restricted in its bargaining efforts by federal court decrees, and both UMW and coal operators were mandated to settle their disputes. The 1950 contract was the only understanding between UMW and operators and was not an instrument of conspiracy.

The 1948 Agreement expired June 30, 1949. A successor industry-wide, multiple-employer agreement (National Bituminous Coal Wage Agreement of 1950) was executed by UMW and operators March 5, 1950.

Though interim bargaining negotiations included UMW demands for unspecified increases in wages and Welfare Fund payments which operators rejected, operator complaints focused around three issues carried over from the 1948 Agreement, namely: Operator complaint that (1) the union-shop clause in the 1948 Agreement did not comply with Taft-Hartley's requirements; (2) the welfare fund could not be administered for UMW members only, as operators claimed that Agreement provided; and (3) the 1948 Agreement's "able and willing" and "memorial period" clauses, operators complained, gave UMW control over working time of the mines.

The operator complaints caused NLRB to issue and process an unfair labor practice complaint against UMW and its president. Then, the United States Attorney General, harmonious to a Presidential Board of Inquiry Report, and a Board Regional Director severally sought injunctive relief, responsive to which the federal district court, in two separate orders on February 11, 1950, enjoined UMW from insisting that (1) a successor agreement require UMW membership of employees "without compliance" with Taft-Hartley's requirements, (2) the agreement provide for a welfare and retirement fund to be administered for UMW members only and (3) the

agreement contain the "able and willing" and "memorial period" clauses, and *ordered operators and UMW* to "engage in free collective bargaining *in good faith*" to resolve their disputes and "make every effort to adjust and settle their differences" as Taft-Hartley contemplated.

Under district court scrutiny, NLRB and Attorney General surveillance, with assistance of members of the Presidential Inquiry Board, *and with UMW's bargaining abilities circumscribed by judicial restraints*, UMW and operators, bargaining in good faith, achieved the 1950 Agreement, which, obedient to the February 11, 1950 injunction, created a union-security clause to comply with Taft-Hartley, made Fund benefits available to signatories' employees *regardless of UMW* membership, and eliminated the "able and willing" clause and amended the "memorial period" clauses.

UMW's full obedience to the district court's injunctive commands is manifested in dismissal of all court proceedings upon motion of the federal agencies involved and in the district court's absolving UMW and Lewis of charges they had contemned the court's injunctive mandates.

IV.

The provisions of the 1950 Agreement and its amendments do not constitute a violation of the Sherman Act. Elements in the negotiation of the 1950 Agreement and the provisions therein and in the amendments thereto do not demonstrate a conspiracy.

1. In 1950, as in all preceding and subsequent negotiations, UMW formulated its wage demands based upon its view of what the industry as an entirety could afford to pay (which included consideration of its profitability and productivity) and what the miner needed to maintain

and improve his standards of living (which included consideration of wage gains in other industries). This was in conformity with UMW's policy of national uniformity of labor standards, already discussed, *ante* pp. 1-3.

Contrary to plaintiffs' thesis that the successive increases in the wage scale and welfare fund payments were tailored to meet the abilities of major coal companies to mechanize and not have their profits affected by the increased labor costs in the amendments to the National Agreement after 1950, UMW has always regarded, as it now does, that mechanization was exclusively a management prerogative and process in which UMW participates in no way although UMW has never opposed it. Historically, mechanization of the mines was a device used by management to compete with other fuels and operators who were unwilling to meet the labor standards required under UMW-achieved labor contracts; it was a competitive medium employed by coal operators prior to and after 1900; and it was a normal procedure long prior to 1950. In 1949-50 mechanization of coal mines in the bituminous coal industry was an existent fact; and it was not an issue in the 1949-50 negotiations. Actually, mechanization is economically inevitable. Increased productivity through mechanization provides increased compensation and better working conditions for working miners, with the concomitant reduction of arduous manual labor notable in the coal industry. Mechanization was the inevitable result of increased technology; it was decreed by the necessities of competition, not only upon coal producers but by competition from other energy sources; it was not restricted to the coal industry but existed in the 1950's in all major industries; and had the coal industry not increased productivity through mechanization with its attendant lower-

ing of production costs, it would have succumbed to the competition of other fuels.

Both prior to and since 1950, there has been a direct relationship between wages and the expansion of mechanization in the coal industry. As output per miner increases through mechanization, the union insists through collective bargaining that the higher productivity justifies a higher wage rate.

2. Between June 30, 1949 (when the 1948 Agreement expired) and March 5, 1950, there was no collective bargaining agreement and thus no obligation for UMW members to produce any coal. Without infringing the Sherman Act, UMW could "sell or not sell their labor" and "upon such terms and conditions as they choose" [*Hunt v. Crumboch*, 325 U.S. 821, 824 (1945)]. During this period, UMW did direct for some weeks a working period of three days a week in mines east of the Mississippi River, but the directive was not effective west of the River. UMW neither sought nor wanted a contractual 3-day work week and it was not a bargainable issue for inclusion in the 1950 Agreement. The directive's purposes were (1) to abate the public concern as to any alleged possible shortage of coal, (2) as a bargaining tactic, and (3) to spread available work among normal labor forces to enable each miner to have some income during negotiations. Mine workers knew that bargaining negotiations would not terminate as long as miners worked full time during the bargaining process.

As indicated, one of the three issues carried over from the 1948 Agreement was its "able and willing" and "memorial period" clauses, which operators complained gave UMW control over working time of the mines. But, the federal district court enjoined UMW from insisting

*inter alia* that the successor agreement contain those clauses. *Penello v. Int. Union, UMWA*, DC, D.C., 1950, 88 F. Supp. 935.

The executed 1950 Agreement eliminated the "able and willing" clause and amended the "memorial period" clause.

Hence, control of production time was not a bargainable issue and could not have been in light of the injunctive decree. It is not consistent with solid sense that operators having succeeded in obtaining the injunction against UMW's insisting upon the clauses would have bargained for matters they had already won in the injunction litigation.

3. The 1950 Agreement did not turn over to the UMW responsibility for the administration of the UMW Welfare and Retirement Fund. As required by section 302(c)(5), Labor Management Relations Act, 1947, administration was and is the joint responsibility of employer and employee representatives, with tie-breaking authority vested in a neutral. In 1950, employer contributions to the Fund increased from twenty cents to thirty cents a ton, and in 1952 to forty cents where it has since remained. The size of the contribution was based exclusively upon the income needed to provide adequate benefits and services. The modesty of the sum is attested by the unfortunate fact that at the present rate benefits and services have had to be curtailed for lack of adequate income. Lawsuits instituted by the Fund to collect past due contributions from delinquent employers are but part of the Fund's fiduciary obligation to realize the income owed it.

As to the Fund's beneficiaries, the law requires,

the agreement provides, and the fact is that all employees of signatory employers are eligible to participate in the Fund as beneficiaries; there is no limitation of eligibility to UMW members only. As already noted, a federal district court in February, 1950, enjoined UMW from insisting on a fund "to be administered so as to provide benefits therefrom for 'UMW members only'", and there is judicial recognition of UMW's obedience thereto.

Any retired employees who may assist in UMW organizational activity do so of their own volition and not at the direction of the UMW or the Fund. Union membership is not a condition of serfdom; it is a voluntary bond of allegiance. In any event, whatever slurs may be cast on the Fund or its administration, the relevance of the aspersions to the claim of an antitrust violation is nonexistent.

Though UMW local and district officers assisted UMW members in filling out information sought on fund application forms, this was done at the request of members. The service was voluntary; most bituminous coal is produced by signatory operators and most applicants are UMW members. This assistance was not a requirement to obtain Fund benefits. Services rendered by such union personnel was a procedural technique designed to protect the basic integrity of the Fund. Applicants who are not UMW members are advised to direct inquiries to the Fund.

Employees in the industry were not led to believe that the Fund was under UMW control. Fund Trustees exercised every reasonable means to inform signatory employees of their rights in the Fund. If employees thought otherwise, since the 1950 Agreement and Fund resolutions make *employment by a signatory* the basic test for bene-

fits, an erroneous impression of plain terms is irrelevant. *Honolulu Star Bulletin, Ltd. v. NLRB*, D.C. Cir., 274 F. 2d 567, 570.

Trustees of the Fund did not institute suits for delinquent royalties to eliminate small operators.

4. Contrary to plaintiffs' thesis, major coal companies have not fostered UMW's domination in the industry. If, as in *Pennington*, plaintiffs predicate this claim upon an alleged invalid union-shop clause in the 1950 Agreement, the claim has no merit. Collective bargaining agreements in the bituminous coal industry antedating 1947 provided employees of signatory operators shall be or become UMW members. Taft-Hartley's enactment caused operators in negotiations preceding the 1950 Agreement's execution, to insist the new contract provide for a union shop "to become effective when and to the extent permitted by law." Operators obtained a federal court injunction prohibiting UMW from insisting that a successor agreement require UMW membership of employees "without compliance with Taft-Hartley's requirements". Operators and UMW, mandated to bargaining in good faith, agreed upon a union-security clause to comply with Taft-Hartley. The 1950 Agreement's union security clause has been thrice judicially approved in *Lewis v. Fentress Coal and Coke Co., Inc.*, D.C., M.D. Tenn., 1958, 160 F. Supp. 221, aff'd 6 Cir., 264 F. 2d 134; *Lewis v. Quality Coal Corp.*, 7 Cir., 270 F. 2d 140 (1959), cert. den. 361 U.S. 929; and *UMWA v. NLRB*, 7 Cir., 284 F. 2d 910 (1961). An identical position urged by *Pennington* was not adopted by the Sixth Circuit (*Pennington v. UMWA*, 6 Cir., 325 F. 2d 804, 817-19). Accord: *NLRB v. News Syndicate Co.*, 365 U.S. 695 (1961); *Int. Typo. Union, AFL-CIO*

*v. NLRB*, 365 U.S. 705 (1961); *Honolulu Star-Bulletin, Ltd. v. NLRB*, D.C. Cir., 274 F. 2d 567 (1959).

5. Contrary to plaintiffs' theory that the alleged conspiracy is shown by a change in the bargaining pattern after the 1950 Agreement's execution, the industry's collective bargaining history has remained substantially the same since the 1890's.

As early as 1897 and since, UMW has bargained on a multi-employer basis in a geographic interstate area representing the largest production area in the industry (known as the central competitive field), which has changed from time to time as the volume of production shifted. The agreement thus achieved by UMW representatives with operators' representatives in the particular central competitive field became the guide for negotiating contracts between UMW and operators in other outlying districts.

In all negotiations, both prior to and after the 1950 Agreement's execution, United Mine Workers in convention and pursuant to its Constitution have constituted and authorized its Policy Committee to deal with negotiations between conventions, and bargaining agreements can be finalized only when authorized by the UMW Policy Committee.

Historically, collective bargaining has involved negotiations with variable geographical groupings of operators in (1) a northern group, (2) a southern group, (3) captive mine owners (who themselves use the coal produced by them), and (4) mid-western and western groups, or (5) combinations thereof. Pursuant to UMW's efforts to procure a uniform agreement, in and since 1945 operators have signed a national uniform agreement although

negotiations have, in most instances, been had on the basis of bargaining with each of several multi-employer groups. A "union may conclude a wage agreement for the multi-employer bargaining unit without violating the anti-trust laws", "it may in pursuance of its own interest seek to obtain the same terms from other employers", and "No case under the antitrust laws could be made out on evidence limited to such union behavior" (*Pennington*, 14 L. ed. 2d 633).

Since 1947, the Taft-Hartley Act has mandated UMW to bargain collectively with representatives selected by the operators for bargaining purposes. In all negotiations, both prior to and after 1950, UMW negotiated with authorized representatives of operators. In negotiations for the 1950 Agreement (prior to a district court injunction discussed *post*, pp. ), UMW met and bargained separately with (1) representatives of northern operators, (2) representatives of southern operators, and (3) representatives of captive operators. Since 1950 it has bargained collectively with BCOA as the bargaining representative of the northern group of operators and captive mine owners producing the largest tonnage of coal in the competitive market for bituminous coal. It was in the process of being formed long prior to the 1950 Agreement's execution, and was established as a labor relations agency to give to the largest group of coal operators a single voice in negotiating a collective bargaining agreement with UMW. Consummation of the agreement must have operator approval and UMW's policy committee's authorization. Southern Coal producers have not been members of BCOA. Western operators (Illinois and Indiana operators) have been in and out of BCOA. Generally, BCOA has been the first to sign. With the legal authority to demand that UMW bargain with it as Taft-

Hartley mandates, southern producers have historically preferred to bargain as a separate unit and to negotiate a labor agreement after UMW has executed with other groups. Consonant with its basic policy of seeking a uniform agreement, the agreement first achieved by UMW has served as a guide for other groups. UMW has not however agreed with any operator or group of operators to impose the agreement first executed upon other groups.

That there was labor strife in the decade preceding 1950, and labor peace in the years thereafter, does not suggest that the price of peace was a UMW-businessmen agreement to drive the "small" operators out of the industry. Indeed, it is in full comport with Taft-Hartley's Declaration of Policy which encourages "orderly and peaceful procedures for preventing" strife between employees and employers. The preceding strife had brought chaos to the industry, marked by strikes, seizures, injunctions, governmental intervention, and the portent of nationalization of the industry feared by both UMW and operators. The succession of strife in the 1940's contributed to the coal industry's loss of markets through competition from other fuels. Peace did not have to be bought by an agreement to drive the "small" operators from the industry. Peace came about because the combatants could continue to wage war only if they were content to face mutual destruction. The sole stabilization sought or secured was surcease from unremitting battle and unrelieved crisis bargaining. Relentless warfare brings its own scars and cessation of strife its own rewards.

6. (a) *Land-lease.* Since 1941 UMW has sought to protect the integrity of the labor standards contained in

UMW's collective bargaining agreement and thus preserve work opportunities for its employee members covered in the contract unit. A 1943 order of the National War Labor Board directed each UMW contract contain a provision relating to *Leased Mines* that "*Operators agree that they will not lease any operating mines subject to this Agreement as a subterfuge*" to avoid the Agreement's provisions. This clause by reference was contained in the Ickes-Lewis Agreement in 1943 and in the National Bituminous Coal Wage Agreement of 1945. The 1952 Agreement provided that operators "agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this Agreement." It expresses a covenant which the basic agreement would in any event imply. Insisted upon by UMW, it was resisted by coal producers. Any argument that this provision barred small coal companies from operating because there is little good coal land available to them as a result of the land lease provisions is answered by federal records disclosing there are proved coal reserves for about 1700 years.

(b) *Protective Wage Clause.* The subterfuge provision proved inadequate. To root out circumvention, a "protective wage clause" (called "PWC") was negotiated in 1958. UMW proposed it; operators refused to accept it and offered counterproposals which UMW rejected; and when accord was reached, operators professed reluctant acceptance to avoid an interruption in the supply of coal. The clause was a continuation of UMW's efforts to prevent operators from vitiating the agreement signed by them.

The clause's purpose had to do with substandard wages and conditions and was explicated in its preamble. UMW

and signatory operators "affirm their intention to maintain the integrity of this contract in all of its parts. The objective of this contract is to provide the maximum possible continuity and stability of employment under the conditions set forth herein. The parties hereto agree that bituminous coal mines shall be so operated as not to debase or lower the standards of wages, hours, safety requirements and other conditions of work, established by this contract."

Two promises were made: ***First***, UMW promised not to alter for the agreement's duration the employment terms "applicable to employees covered by this Contract" which the agreement prescribes, and to perform and enforce the agreement diligently. ***Second***, operators promised that if they obtain coal from others instead of mining it themselves, coal would be obtained from others who maintain labor standards "as favorable to the employees as those provided for in this Contract", thus assuring UMW that acquisition of coal from others will not be used by a signatory operator as a device to undercut the labor standards to which it has promised to adhere. This is known as a work standards clause. The clause does not prohibit dealings between any persons; signatories must assure themselves that coal in which they deal has been produced under labor standards at least equal to those set forth in UMW's contract; a nonunion producer need only to see that his coal is produced under standards equivalent to those in the contract if he wishes to sell coal to a signatory; and the clause does not impose either UMW or its Agreement on a nonsignatory. It does, however, protect the job opportunities of the unionized worker and safeguards his employment and his wage and benefit scale by removing the economic inducement to signatory producers to purchase coal under sub-

standard conditions. In accordance with the "usual function of a standards clause," it "would at least remove from the employer the temptation of cheap labor through substandard contractors." ***Meat and Highway Drivers Local Union No. 710 v. NLRB***, D.C. Cir., 335 F. 2d 709, 716.

The PWC was executed on December 3, 1958. Its legality was unquestionable under the National Labor Relations Act at the time it was executed. However, on September 14, 1959, effective sixty days later, the National Labor Relations Act was amended by the addition of a section 8(e) which invalidated the so-called hot cargo agreement by which an employer, in the statutory language, "ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person . . ." The purpose of section 8(e) is to bar an agreement which sanctions a secondary boycott, and in determining the legality of a controverted agreement the question is whether that agreement "is fairly within the intendment of Congress to do away with the secondary boycott." ***District No. 9, Machinists v. NLRB***, D.C. Cir., 315 F. 2d 33, 36.

On August 27, 1963, the National Labor Relations Board found that the work standards provision of PWC violated section 8(e). ***United Mine Workers***, 144 NLRB 228. But on judicial review, the Court of Appeals for the District of Columbia Circuit on August 4, 1965 concluded the Board applied incorrect legal principles in reaching its decision and remanded the case to the Board for redetermination in accordance with proper standards. *Lewis v. NLRB*, 59 LRRM 2946. As the Court states,

a work standards agreement "would not ordinarily violate §8(e) so long as it was 'germane to the economic integrity of the principal work unit,' or sought 'to protect and preserve the work and standards [the union] has bargained for.'" *Id.* at 2946.

(c) ***Welfare Fund Clause.*** Meanwhile, the Board having invalidated the work standards clause, UMW negotiated a substitute for it, designed to meet the same problem to which the earlier clause had been directed. The substitute clause required a signatory operator to pay into the UMW Welfare and Retirement Fund the sum of 80 cents per ton for each ton of coal acquired by it on which the sum of 40 cents per ton had not previously been paid into the Fund. UMW knew operators would oppose total prohibition, and framed their demands based on such need and practices, bargaining in good faith, yet motivated by the desire to preserve job opportunities for employees in the contract unit.

The Welfare Fund clause requiring signatories to pay 80 cents on coal procured or acquired from nonsignatories is devoid of secondary pressures and does not fall within the targets at which 8(e) was aimed: it is not a "hot cargo" clause; it does not restrict a signatory's purchases of coal from any producer except to the extent of compensating the contract unit for loss of job opportunities and security attending purchases of nonsignatory coal; and it does not extend its provisions to employees of unorganized producers. Yet, it accords to any signatory an unrestricted freedom of choosing the source of coal which it may use. The Board on August 7, 1964 found this substitute clause also violated the Act's section 8(e). *United Mine Workers*, 148 NLRB No. 31, 56 LRRM 1471. While the validity of the substitute 80-cents clause is

not yet judicially determined, it is apparent that the Board's decision proceeds from the same premises which the Court of Appeals for the District of Columbia Circuit has since held to be incorrect.

Behind both PWC and the Welfare Fund clauses is the union aim of preventing circumvention of the agreement's labor standards, and this end is achieved by the union's negotiating safeguards with resisting employers. It is not part or product of a union-businessmen conspiracy designed to drive "small" operators from the industry.

V.

The Walsh-Healey and TVA Episodes Are Not Violative of the Sherman Act Under Applicable Law.

In accordance with the Walsh-Healey Public Contracts Act, UMW and mine operators petitioned the Secretary of Labor to determine the prevailing minimum wage paid employees in the coal industry, so that such wages would be required by the Government in supply contracts within that industry. The Secretary issued an order setting the prevailing wage for coal industry employees. In the belief that the TVA was pursuing coal purchase practices which failed to respect the purpose of the prevailing wage determination, UMW urged TVA to adopt a purchase policy which would adhere to the precept of the Walsh-Healey Act that governmental purchases should not be made from firms which pay substandard wages.

"Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition" and "Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act" (*Pennington*, 14 L. ed. 2d

636). Moreover, plaintiffs "could not collect any damages under the Sherman Act for any injury which it suffered from the action of the Secretary of Labor." To persuade the Secretary of Labor to establish the prevailing minimum wage in an industry is simply to persuade him to carry into effect Congress' purpose in enacting Walsh-Healey. "The purpose is to avoid competitive advantage for firms which pay substandard labor wages." *Industrial Union Department, AFL-CIO v. Barber-Colman*, D.C. Cir., No. 18,437, June 21, 1965, sl. op. p. 2. Congress has thus itself expressed the judgment that substandard wages should not be an element of competition. To carry the congressional judgment into effect cannot possibly be translated into the expression of a predatory anti-competitive design. The same is true of efforts to persuade public officials to adopt and execute purchasing policies which respect the judgment of Congress in enacting the Walsh-Healey Act. Accordingly, no predatory anti-competitive purpose exists by which to seek to taint conduct unrelated to the approach to the public officials.

VI

Though UMW had investments in stock ownership of West Kentucky and loans to other stockholders secured by shares of that company's common stock, it was not a *Sherman* violation to make such investments; such investments were made subsequent to the alleged conspiracy in 1950 when West Kentucky was not a UMW contract signatory; West Kentucky became such a signatory only upon evidence that its employees had, in writing, selected UMW as bargaining agent and its execution of the UMW agreement accorded with national labor policy. UMW made no suggestions and proposed

no policies with reference to West Kentucky's management, marketing or pricing policies. West Kentucky bids on the TVA market were formulated by West Kentucky personnel without consultation, agreement or understanding with UMW concerning such bids. Absent conspiratorial conduct, UMW could not be held accountable for bids on the TVA market. Actually, the condition of the TVA coal market as it related to coal producers resulted from forces unrelated to any alleged conspiracy and TVA's annual reports to support this contention.

Independently of the lack of nexus between the UMW and any managerial decisions or activity of any business entities, and looking solely to the conduct of the business entities themselves, there was no collusion among businessmen to drive "small" operators from the market by predatory price-cutting or like anticompetitive business behavior. By contemporary standards of business concentration the coal industry remains remarkably free of oligopolistic character. No individual company has a dominant share of the market. Entry into the industry is relatively easy. Competition among all segments of the industry is intense. Coal customers match the largest of the coal operators in industrial size and significance and the customers' search for low price and reliable supply is strongly procompetitive. Not collusive anticompetitive conduct, but the dependable capacity to furnish the required quantity and quality at a reasonable price, governs the share of the market that any mine operator obtains. There are no sheltered markets for "small" or "large" operators.

VII.

UMW is a labor organization within the meaning of

Sec. 6 of the Clayton Act (29 USCA 17) and it acted as such for its members in the negotiations for and execution of the collective bargaining agreement known as the National Bituminous Coal Wage Agreement of 1950 and the amendments thereto.

Throughout its history UMW has been a militant organization aggressively furthering the working welfare of the employees it represents. The policies it has pursued in collective bargaining have been its own. The agreements it has achieved are the best it was able to negotiate through arms-length bargaining. Like all preceding agreements, the 1950 and successor agreements are the product of UMW's independent judgment obtained by its independent efforts acting unilaterally and alone and in its own self-interest, free of any alliance or combination with any employer or employers for a predatory anticompetitive purpose. Not conspiratorial connivance with businessmen, but free, mature and above-board collective bargaining is at the heart of the agreements reached.

By virtue of Sections 6 and 20 of the Clayton Act (15 USCA 17, 29 USCA 52) and the provisions of the Norris-LaGuardia Act (29 USCA 101, et seq.), the negotiation and execution by UMW of the National Bituminous Coal Wage Agreement and the amendments thereto, and UMW's acts and conduct in connection with the enforcement thereof do not constitute a violation of the Sherman Act.

Both Congress (Sec. 6 of the Norris-LaGuardia Act, 29 USCA 106) and the Supreme Court (*Pennington*, 14 L. ed 2d 633, 634) have mandated that only upon clear proof may a court hold that UMW's immunity under the Sherman Act has been forfeited. *"Either there is some agreement, combination or conspiracy or there is not" and*

*the answer must be found in evidence adduced and not "in some crystal ball or vaguely sensed by some process of intuition, based upon a chance phrase used here or there" (U.S. v. Morgan*, DC, S.D. N.Y., 1953, 118 F. Supp. 621, 634). Speculation cannot supply the place of proof" (*Moore v. C & O Ry. Co.*, 340 U.S. 573, 578) and "mere speculation" may not be "allowed to do duty for probative facts" (*Tennant v. Peoria & Pekin Union R. Co.*, 321 U.S. 29, 32).

## ADDITIONAL THEORIES UPON WHICH UNITED MINE WORKERS OF AMERICA EXPECTS TO DEFEAT RECOVERY

1. The revised complaint and supplement thereto fails to state a claim upon which relief may be granted.

2. The revised complaint and supplement thereto fails to show that plaintiffs were damaged by reason of any acts on the part of, or participated in, by the defendant, United Mine Workers of America, which activities are violative of the Sherman Antitrust Act.

3. Damages sought herein by plaintiffs are uncertain, speculative and unfounded.

4. The revised complaint and supplement thereto fails to allege the necessary facts required by Rule 23(a) of the Federal Rules of Civil Procedure for an action to be properly initiated as a class action.

5. There is a misjoinder of parties plaintiff in that the action is filed on behalf of spearate and distinct groups, namely parties averred to be engaged in business as "strip miners", another group averred to be engaged as mechanized operators and another group averred to be engaged as non-mechanized operators.

6. The alleged cause of action in whole or in part did not, as to each of the several plaintiffs, accrue within four years next preceding the filing of the amended complaint, or the original complaint, or the revised complaint. Defendant contends that the statute of limitations was not tolled as to each plaintiff until such plaintiff properly became a party to this case. A & R Coal Company, Inc., J. H. Graham Coal Company, Inc., W. T. Morrison and Lois Hall Travis, Adm., dba M & T Coal Company, Inc., Stephenson Brothers Coal Company, Inc., East Valley Coal Company, Inc., H. W. Flynn Coal Company, Inc. and Howard Higgins Coal Company, Inc., first became parties to this action on September 18, 1964, upon their designation as such in the "Revised Complaint". Accordingly, their respective actions are barred by the applicable four year statute of limitations (15 USC Sec. 15) to the extent it accrued more than four years prior to September 18, 1964.

7. This action is barred and may not be maintained by the plaintiffs, George Ramsey, Leon Nunley, Edward Nunley, John T. Stephenson and Howard Stephenson, W. T. Morrison and Lois Hall Travis, Adm., dba M & T Coal Company and Marshall Meeks, the said individuals having sued the defendants as Third Party Defendants for certain relief on the basis of substantially the same facts that are relied upon herein, in the United States District Court for the Eastern District of Tennessee, all as shown in motions now pending before this Court in this action. Each of such cases was dismissed with prejudice by orders of this Court entered therein with the approval of counsel for the parties. Because plaintiffs may not present demands growing out of the same facts in separate actions, their claims in the instant case may not be maintained.

8. This action is barred and may not be maintained by the plaintiff Paul Gibbs in that he has heretofore sued the defendant for relief on the basis of substantially the same facts that are relied upon herein in the United States District Court for the Eastern District of Tennessee, Southern Division, Case No. 3771. Said case was prosecuted to judgment and is now pending on a petition for writ of certiorari in the Supreme Court of the United States.

9. United Mine Workers of America denies that it has entered into any contract or joined in any combination or conspiracy in restraint of trade or commerce in violation of the Sherman Act.

10. It denies that it has monopolized or attempted to monopolize or that it combined or conspired with any other person or persons or group of persons to monopolize any part of the trade or commerce among the several states or with foreign nations.

11. By virtue of Section 17 of the Clayton Act (15 U.S.C.A. 17) and by virtue of the provisions of the Norris-LaGuardia Act (29 U.S.C.A. 101 et seq.), the negotiations and execution by the union of the National Bituminous Coal Wage Agreement of 1950, and that Agreement as amended, and United Mine Worker's acts and conduct in connection with the enforcement thereof do not constitute a violation of the Sherman Act.

12. United Mine Workers is a labor organization within the meaning of Section 17 of the Clayton Act and it acted as such for its members in the negotiations for the execution of the collective bargaining agreements known as the National Bituminous Coal Wage Agreement of 1950 and the amendments thereto.

13. United Mine Workers denies that it participated in, or that it authorized or ratified any acts of violence complained of by plaintiffs herein.

14. It denies that in any of the activities complained of in this case it conspired or joined with coal operators or any other non-labor groups for any purpose or in any manner.

15. It denies that there was upon its part any conspiratorial conduct or any wrongful conduct, or that it committed any wrongful, illegal, conspiratorial or monopolistic acts in connection with the actions which were had under the Walsh-Healey Act for the establishment of wages for those employed in the mining industry.

16. It denies that plaintiffs have any right to rely upon any proceedings with respect to a Walsh-Healey minimum wage rate determination or that the plaintiffs have any right to introduce evidence thereon or on the effect thereof either as a basis of liability under the Sherman Act or as a part of an alleged conspiracy under said Act.

17. United Mine Workers denies that it has been or is now a party to any agreement or conspiracy relative to the TVA coal market and United Mine Workers denies that such a conspiracy exists.

18. United Mine Workers denies that plaintiffs, or any of them, are entitled to recover any damages against it in this action.

[Signatures Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## COMPLAINT

(Filed October 12, 1963)

1. This action arises under the anti-trust laws of the United States, more particularly Sections 1, 2 and 3 of the Sherman Anti-Trust Act, 15 U.S.C. Secs. 2 and 3, and Section 4 of the Clayton Act, 15 U.S.C. Sec. 15, as hereinafter more fully appears.

2. The plaintiff, Tennessee Products & Chemical Corporation, is a Tennessee corporation with its principal office at 2611 West End Avenue, Nashville, Tennessee. For many years plaintiff has owned or held under lease many thousands of acres in the southeastern Tennessee coal field in Grundy, Marion and Sequatchie Counties. For many years prior to the matters hereinafter related, plaintiff conducted a profitable business in the leasing of coal lands, the mining of coal, the leasing of coal-mining equipment to other producers, and in the sale of coal produced by itself and by other producers.

3. The defendant, United Mine Workers of America, hereinafter called "UMW", is a labor organization organized as an unincorporated association whose membership is made up of many thousands of members situated throughout the United States. At the times herein mentioned, the UMW had duly authorized officers and agents engaged in representing or acting for the UMW in the conduct of its business within the Eastern District, Southern Division of Tennessee. The principal office

of the UMW is 900 Fifteenth Street, N.W., Washington, D.C.

4. The defendant, West Kentucky Coal Company, is a corporation with its principal office in Madisonville, Kentucky. The defendant, hereinafter referred to as "West Kentucky," is qualified to do business in the State of Tennessee, under the Foreign Corporation Laws of this State and does business and has offices and agents in Tennessee. It conducts a coal-mining and coal-selling business and has, for several years, carried on a substantial part of that business in the Eastern District, Southern Division of Tennessee.

5. Prior to 1950, the defendant UMW had a bitter struggle with the major coal companies of the country over two questions: (1) the means of controlling coal production and prices to avoid over-production with resulting chronic problem of periods of slump and no work in the industry, and (2) the question of control of the United Mine Workers of America Welfare and Retirement Fund. These questions were economically related. Defendant UMW reached an agreement or understanding in 1950 with the major coal companies of the country with respect to these two questions. The understanding encompasses the plan to force all production under certain rigid patterns that would result in the inability of smaller mines or mines in the areas of thin seams to produce coal on a competitive basis or market such coal after it was produced. This plan was to be effectuated by forcing all producers to pay labor costs that were tailored to fit the abilities of large and intensely mechanized mines but which costs were far beyond the abilities of small or thin seam mines; and also by imposing boycotts of coal lands and coal markets for those producers

who did not pay such labor costs. The intended result was the elimination of competition from the smaller mines and the driving from the industry of hundreds of thousands of working men. The Tennessee coal fields, particularly the fields where plaintiff operates, are thin seam fields and intense mechanization is not feasible in these conditions. Yet thousands of people and whole communities are dependent on coal production for livelihoods in this area. The coal industry of the area and the people working in the industry have suffered by reason of the application of the aforesaid plan. The development of the Tennessee Valley Authority coal burning electricity generating plant system in the 1950's and the enormous expansion of the coal market resulting therefrom gave promise of better business to the local coal industry, but such expansion also called the attention of UMW and the collaborating major coal companies to the area.

6. West Kentucky is engaged in the mining and marketing of coal produced from its mines located in what is known as the eastern Kentucky coal fields. In 1951 UMW began acquiring capital stock of West Kentucky and prior to 1956 had acquired the controlling interest, either in its own name or in the name of its nominees, with the purpose of using such company as well as UMW's powers as a labor organization to destroy the competition of plaintiff and others and of taking from them the coal business in plaintiff's marketing area. West Kentucky, certain other major coal companies and UMW combined and conspired to effectuate said purpose and did effectuate said purpose by the following means: (a) UMW provided, either directly or indirectly, the funds necessary to mechanize more intensely the mining operations of West Kentucky and to enable that company to stay in

business while putting its coal on the market at unprofitable prices which were below the ability of local producers to match and with the effect of depressing the TVA market price; (b) UMW, through the use of force, coercion, intimidation and violence forced small coal mine operators, including plaintiff, to employ members of UMW and to agree to pay the wages and make the welfare fund contributions specified in the National Bituminous Coal Wage Agreement of 1950, and in the periodic amendments thereto which increased such wages and contributions, thereby increasing their costs; (c) UMW, by concerted action with major coal companies, procured a minimum wage rate in the coal industry under the Walsh-Healey Act for the purpose and effect of boycotting from the TVA market coal from mines that could not abide by the labor costs imposed in the National Bituminous Coal Wage Agreement; (d) UMW deliberately and systematically instigated costly labor disputes, work stoppages, strikes and sabotage of equipment in the southern Tennessee coal fields in order to disrupt the production of coal and to make it impossible to fulfill shipping requirements, for the purpose of destroying plaintiff and other southern Tennessee operators as competitors.

7. The defendants, UMW and West Kentucky and each of them, have combined, conspired, confederated and agreed together to create a monopoly in the sale of coal by eliminating the competition of coal producers in the southern Tennessee coal fields, including plaintiff, and in furtherance of said conspiracy and to accomplish its purpose have performed the overt acts set forth in paragraph 4, 5 and 6 hereof, thereby violating the antitrust laws of the United States.

8. As a result of said conspiracy and the acts of

said defendants in furtherance thereof, plaintiff has been forced to close down its mines and cease its theretofore profitable coal mining operations, suffering injuries and damages in its property in the actual amount of $1,500,000, and is entitled under Section 4 of the Clayton Anti-Trust Act, 15 U.S.C., Sec. 15, to threefold damages in the amount of $4,500,000, and its costs of suit, including reasonable attorneys' fees.

WHEREFORE, Tennessee Products & Chemical Corporation prays judgment for said amounts as compensation for its injuries and damages sustained in the manner and the amounts as above alleged, together with interest thereon and costs, and demands a jury to try the issues in this cause.

[Signatures Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## ANSWER OF THE DEFENDANT UNITED MINE WORKERS OF AMERICA

(Filed October 30, 1964)

The defendant, United Mine Workers of America, for answer to the Complaint filed herein, says:

### First Defense

The Complaint fails to state a claim upon which relief can be granted.

### Second Defense

The Complaint fails to show that the plaintiff was damaged by reason of any activities on the part of, or participated in by this defendant, which activities are violative of the Sherman Anti-Trust Act (Title 15, USC, Section 1, et seq.)

### Third Defense

The alleged acts set out in the Complaint and the cause of action based thereon, are not alleged to have transpired within four years next preceding the filing of the Complaint, and accordingly, plaintiff's action is barred by the applicable statute of limitations.

### Fourth Defense

The damages sought to be recovered appear from allegations of the Complaint to be uncertain, speculative and not a result of any facts set out in the pleading.

Answer of Defendant (No. 4189)

Fifth Defense

The Court is without jurisdiction to grant relief to the plaintiff on account of acts which would have amounted to unfair labor practices within the meaning of the National Labor Relations Act and within the sole and exclusive jurisdiction of the National Labor Relations Board.

Sixth Defense

This defendant denies that there was on its part any conspiratorial conduct or any wrongful conduct, or that it committed any wrongful, conspiratorial, illegal or monopolistic acts violative of the Sherman Act. Defendant would show that in the period of time involved herein all of the acts of this defendant involved in this action were motivated by legitimate labor goals and for the purpose of securing union standards of wages and better conditions of employment for its members.

Seventh Defense

By virtue of Section 17 of the Clayton Act (15 USCA 17) and by virtue of the provisions of the Norris LaGuardia Act (29 USC 101 et seq) the negotiations and execution by this defendant of the National Bituminous Coal Wage Agreement of 1950, and the amendments thereto, and defendant's acts and conduct with respect thereto, do not constitute a violation of the Sherman Act. Moreover, this defendant is a labor organization within the meaning of Section 17 of the Clayton Act and it acted as such for its members in the negotiations for and execution of said collective bargaining agreements.

Answer of Defendant (No. 4189)

## Eighth Defense

For separate and further defense in this action this defendant says that:

1. It admits that this action purports to arise under the Sherman Act, as amended, as averred in Paragraph 1 of the Complaint, but denies that the Complaint is well founded thereon.

2. This defendant is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Complaint.

3. This defendant admits the allegations of Paragraph 3 of the Complaint.

4. For answer to Paragraph 4 of the Complaint, this defendant admits that the defendant, West Kentucky Coal Company, is a corporation with principal office in Madisonville, Kentucky. It is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in this paragraph of the Complaint.

5. This defendant denies each and every allegation of Paragraph 5 of the Complaint.

6. For answer to Paragraph 6 of the Complaint, this defendant denies that West Kentucky Coal Company is engaged in the mining and marketing of coal produced from mines located in the Eastern Kentucky coal fields. UMW admits that it made some investments of its funds in capital stock of West Kentucky Coal Company. It denies that it acquired a controlling interest in that company either in its own name or in the name of its nominees, and it denies that it utilized nominees in this regard. All other allegations of Paragraph 6 are denied.

7. The allegations of Paragraph 7 of the Complaint are denied.

8. The allegations of Paragraph 8 of the Complaint are denied.

This defendant denies that it has damaged the plaintiff and denies that the plaintiff is entitled to recover any relief in this action whatsoever.

Each allegation of the Complaint not admitted, denied or explained herein is here and now denied.

And now, defendant, UMW, having fully answered, prays to be dismissed with its costs.

[Signatures and Certificate Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## SUPPLEMENTAL COMPLAINT

(Filed September 14, 1966)

Plaintiff refers to and adopts the allegations contained in the complaint filed by it in this cause. Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, plaintiff files this Supplemental Complaint and alleges that the conspiracy averred in the complaint has continued after the date of the filing of said complaint through the year 1965 and that plaintiff has suffered additional damages proximately resulting from said conspiracy since the date of the filing of the complaint. Because of the continuance of said conspiracy and resulting inability of the plaintiff to carry on a coal business, plaintiff has been compelled to pay out sums of money for minimum royalties on leased coal lands and pay out sums of money for failure to ship coal on contracts which it held prior to the filing of the complaint, which payments would not have been necessitated were it not for the conspiracy; in addition, plaintiff has continued to suffer loss of profits, because of the conspiracy. Plaintiff, therefore, sues defendants for such damages for the period ending December 31, 1965, in the additional sum of $300,000.00 compensatory damages or $900,000.00 treble damages, and demands a jury to try the issues.

[Signatures and Certificate Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## ORDER DISMISSING DEFENDANT, WEST KENTUCKY COAL COMPANY

(Filed December 5, 1966)

This case is before the Court upon the motion of the plaintiff to be allowed to dismiss its complaint against the defendant, West Kentucky Coal Company, only without prejudice and without costs. Having considered the motion and the representations of the party, the Court is of the opinion that the motion should be allowed.

It is accordingly ORDERED that this cause be and hereby is dismissed as to the defendant, West Kentucky Coal Company, such dismissal to be without prejudice and without costs.

This order of dismissal as to West Kentucky Coal Company will be without prejudice to the right of the defendant, United Mine Workers of America, to amend its answer herein so as to assert any defense alleged to have arisen by reason of the settlement between the Tennessee Products and Chemical Corporation and West Kentucky Coal Company and said defendant will be allowed fifteen (15) days from the entry of this order within which to amend its answer in this respect.

APPROVED FOR ENTRY.

[Signatures Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## ORDER ON MOTION TO AMEND

(Filed December 5, 1966)

The plaintiff has moved to be allowed to amend its complaint to seek additional damages through the period ending December 31, 1965. Having considered the motion and the representation of counsel, the Court is of the opinion that the motion to amend should be allowed.

It is accordingly ORDERED that the plaintiff's motion to be allowed to amend its complaint to seek additional damage through the period ending December 31, 1965, be and hereby is allowed. The defendant will be allowed fifteen (15) days within which to answer the complaint as amended.

APPROVED FOR ENTRY.

[Signature Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## ORDER

(Filed December 5, 1966)

Pursuant to agreement and stipulation of counsel for plaintiff, Tennessee Products and Chemical Corp., and for defendant, United Mine Workers of America, which agreement and stipulation is evidenced by signatures of counsel below, this case is hereby submitted to the Court for adjudication and decision by the Court, sitting without a jury, upon all issues, the record upon which the adjudication is to be made being the record in this case together with the transcript, exhibits and stipulations as to evidence filed in the case of Ramsey, et al., v. United Mine Workers of America, Civil Action No. 3667, in this Court. The Court shall first adjudicate the issue of liability, and in the event that the Court shall adjudicate the issue of liability in favor of plaintiff and against defendant, the parties shall have the right to present additional evidence, for adjudication by the Court of the amount of damages, upon such terms as may be hereafter stipulated by the parties or ordered by the Court.

ENTER:

[Signatures Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## AMENDMENT TO ANSWER OF UNITED MINE WORKERS OF AMERICA

(Filed December 20, 1966)

Pursuant to leave granted by the Court's orders of December 5, 1966, the defendant, United Mine Workers of America, files the following as an amendment to its answer.

1. For answer to the complaint as amended and supplemented and filed herein, defendant incorporates by reference each of the defenses asserted in its answer filed heretofore, and, further answering, denies each and every allegation set forth in the supplemental complaint. Defendant specifically denies the existence of the conspiracy referred to in the complaint as amended and supplemented, and denies that plaintiff was damaged in any manner by the defendant.

2. For a further and separate defense, the defendant, United Mine Workers of America, would show that plaintiff has entered into a settlement with West Kentucky Coal Company with regard to the alleged cause of action set forth in the complaint, pursuant to which West Kentucky Coal Company has been dismissed as a defendant in this action. Defendant, United Mine Workers of America, says that the settlement thus made constitutes a bar to the prosecution by plaintiff of the alleged cause of action against it, and accordingly that the complaint as amended should be dismissed.

[Signatures and Certificate Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## ANSWER OF PLAINTIFF TO AFFIRMATIVE DEFENSE CONTAINED IN THE ANSWER OF DEFENDANT, UNITED MINE WORKERS OF AMERICA

(Filed December 29, 1966)

In answer to the affirmative defense contained in the amendment to answer of United Mine Workers of America the plaintiff, Tennessee Products and Chemical Corporation, denies that there has been a settlement with West Kentucky Coal Company, which would constitute a bar to the prosecution of the cause of action against defendant, United Mine Workers of America.

[Signatures and Certificate Omitted]

[Caption Omitted]

[Civil Actions Nos. 3667 and 4189]

## OPINION

(Filed March 4, 1967)

These two lawsuits involve antitrust actions instituted against the United Mine Workers of America by a number of coal operators from the Southeastern Tennessee coal fields. The lawsuits, like the economic struggle of which they are a part, have been long and hard fought. The issues here involved are basic issues. They involve a basic commodity in the American economy—coal. They involve basic principles of American labor-management relations—the manner in which labor and management may lawfully seek their respective aims and goals. They involve basic principles of American law—the extent to which Federal Antitrust Laws shall regulate the activities of labor unions.

The original action, in Docket No. 3667, purported to have been brought as a class action, some 27 individuals, partnerships and corporations joining as plaintiffs. As originally filed, the lawsuit named a number of parties as defendant, including United Mine Workers of America, the Trustees of the United Mine Workers of America Welfare and Retirement Fund, the West Kentucky Coal Company, Inc., Cyrus W. Eaton, the Tennessee Valley Authority, G. O. Wessenauer, manager of power for the T.V.A., and The Louisville and Nashville Railroad Company. Along the way plaintiffs were added and plaintiffs dropped out or were dismissed from the suit so that, at the time of the trial, some 16 individuals,

partnerships and corporations remained as parties plaintiff. Also along the way the suit was dismissed as to all defendants other than the United Mine Workers of America. In the course of the trial an additional plaintiff, Walden Ridge Coal Company, was dismissed for lack of any evidence in its behalf. Various motions were made at the trial by the defendant with respect to the right of other individual plaintiffs to maintain this suit, but action upon these individual motions was reserved for this opinion. The case was tried by the Court sitting without a jury. The trial extended over a period of weeks with a record in excess of five thousand six hundred pages having been made and four hundred fifty exhibits having been filed, many of the exhibits themselves being quite voluminous. This lawsuit has been well tried and the parties have submitted excellent briefs.

At the time the lawsuit in Docket No. 3667 was tried, there was pending upon the dockets of this court the case of *Tennessee Products & Chemical Corporation v. United Mine Workers of America and West Kentucky Coal Company, Inc.*, Docket No. 4189. This lawsuit contained almost identical allegations of liability as were involved in Docket No. 3667. Following the trial and submission of briefs in the original action, Docket No. 3667, the parties undertook negotiations in Docket No. 4189, which negotiations eventually led to a dismissal of that action as to the defendant, West Kentucky Coal Company, Inc., and to a stipulation by the parties that the issue of liability in that case would be submitted to the Court for decision upon the record made in the trial of Docket No. 3667. This opinion would accordingly decide all issues in Docket No. 3667 but only the issue of liability in Docket No. 4189.

## SUMMARY OF CONTENTIONS

A summary of the contentions of the parties would lay an appropriate foundation for the analysis of the evidence and the factual and legal conclusions which the Court must make in deciding these cases. The Court will accordingly attempt a concise statement of the theories advanced by the respective parties.

### Plaintiffs' Contentions

The plaintiffs contend that the defendant, United Mine Workers of America (sometimes hereinafter referred to as "U.M.W.") has over a number of years now engaged in an unlawful conspiracy with certain coal operators to eliminate and suppress competition in the coal industry, to control the Southern Appalachian coal fields and to suppress or eliminate the production of coal in the Southeastern Tennessee coal fields. This conspiracy is alleged to violate Sections 1 and 2 of the Sherman Antitrust Act (15 U.S.C. Sections 1 and 2). It is alleged that the major coal producers in Pennsylvania, Ohio and adjacent states, including among others Consolidation Coal Company and Island Creek Coal Company, had prior to 1950 largely dominated the production and marketing of coal in the Appalachian area. This domination was threatened by the rise of small independent producers during and following World War II. By 1949-1950 the coal industry in America was confronted with a problem of over production. Thereupon, commencing with the National Bituminous Coal Wage Agreement of 1950, the U.M.W. combined and conspired with major coal companies to force uniform wages which only the larger companies could meet on all coal producers in the nation, including those in marginal seams, such as the plaintiffs,

to restrain competition from those many small producers who were operating under conditions where they could not possibly perform the terms of the national contract and thus to eliminate the competition of producers from the market, thereby permitting the markets to be taken over by the major coal combines. Successive amendments to the National Bituminous Coal Wage Agreement of 1950 were negotiated between the U.M.W. and the major coal producers in 1951, 1952, 1955, 1956 and 1958 raising wages to an exceedingly high level and increasing the welfare fund royalty from 10¢ a ton to 40¢ a ton. It is alleged that these amendments were a part of the same conspiracy and in furtherance of the same monopolistic practices. The successive increases in the wage scale and welfare fund payments were designed and tailored to meet the abilities of the major coal companies to mechanize and not have their profits affected by the increasing labor costs, the U.M.W. all the while having full knowledge that the smaller companies could not pay the wage scale and royalties and would therefore fall by the wayside. It is alleged that the U.M.W. favored the coal industry being taken over by the large combines of coal producers and in furtherance of this engaged in a campaign to impose the wage contracts upon the small independent and non-union mines, this effort by the Union being particularly intense after 1950. Mob violence and terrorism were used by the Union in furtherance of these purposes. To accelerate the demise of small companies, provisions were placed in the national contract whereby the operators agreed not to lease coal lands or purchase coal from non-signatories to the contract. In 1958 an amendment to the contract was negotiated whereby the U.M.W. expressly agreed not to enter into any agreement with other coal operators

upon any basis other than the national contract.

In the meantime, the rapid expansion of the Tennessee Valley Authority steam plant system during the 1950's, resulting in the T.V.A. becoming the largest coal purchaser in the nation, called the attention of the conspirators to the Southern Appalachian region. The U.M.W. thereupon invested over $25,000,000 in coal companies, principally the West Kentucky Coal Company, and its subsidiary, Nashville Coal Company, and these companies, along with other conspirators, adopted the practice of predatory pricing to drive the T.V.A. coal market price down to a level where small producers could not compete upon the market. Large tonnages of coal were dumped on the T.V.A. market at constantly lower prices. During the same time it is alleged that the U.M.W. sought to suppress production of coal by the plaintiffs by creating labor turmoil, violence and intimidation throughout the Southeastern Tennessee coal fields. In this manner, by reducing production in the Southeastern Tennessee coal field by labor turmoil, while at the same time forcing the T.V.A. coal market price downward, the plaintiffs were caused to lose their principal market, the T.V.A. steam plant market. The conspiracy thus manifested itself in the Southeastern Tennessee coal fields by a squeeze applied to the local operators both from the market side and from the labor side. While large producers in other fields, including companies owned by the U.M.W., applied downward pressure on the price of coal in the plaintiffs' principal market, U.M.W. sought to raise labor costs by forcing the national contract upon the plaintiffs, by interfering with production, by engaging in widespread acts of violence and intimidation, and by closing down the Southeastern Tennessee coal fields for long periods of time by means

of labor turmoil. It is alleged that the result of all of these actions has been that a large number of small coal companies, including many of the plaintiffs, have been driven out of the coal industry and large numbers of coal miners have been put out of work. Those plaintiffs who have managed to survive contend that they have been severely damaged by the defendant's monopolistic practices.

## Defendant's Contentions

The defendant denies participation in any conspiracy and denies that the plaintiffs have been the victims of any antitrust violations on the part of the defendant. On the contrary, the U.M.W. contends that the plaintiffs have been the victims of their own mismanagement, their own ineptness, their own failure and refusal to keep up with the industry, and have created their own labor turmoil, either by refusing to enter collective bargaining agreements or by refusing to abide by the terms of the agreements which they had signed. The U.M.W. contends that its activities have at all times been legitimate activities for a labor union, that it has always acted to further the best interests of its members by arms'-length bargaining with coal operators, all in accordance with federal labor laws and federal labor policy. From its inception in 1890, the U.M.W. contends that it has consistently sought to unite all workers employed in the coal industry in one organization and that it has always vigorously sought to achieve national uniformity in wages, labor standards and mine safety requirements. It has always refused to subsidize marginal operators through substandard labor conditions. It contends that the 1950 National Bituminous Coal Wage Agreement was the result of good faith collective bar-

gaining—bargaining conducted under the strict scrutiny and supervision of federal authorities, including the federal courts. It denies any conspiracy then or thereafter to drive any coal producers out of the industry. While not attempting to force mechanization upon the industry, the U.M.W. recognized that mechanization was the inevitable result of technological advances and of competition with other fuels and accordingly has not opposed such mechanization. On the contrary, it has sought through collective bargaining to assure that its members would share in the benefits of increased productivity. The defendant contends that all amendments to the National Wage Agreement since 1950 have likewise been the result of good faith collective bargaining and not the result of any conspiracy as contended by the plaintiffs. The U.M.W. denies that the land lease clause or the clause in regard to subcontracting was a part of any conspiracy aimed at small producers, but avers that they were solely to protect the integrity of the labor standards negotiated in the contract and to prevent signatories to the contract from using these means to escape from their obligations under the contract. The protective wage clause negotiated in 1958 was merely a commitment upon the part of the U.M.W. to enforce the contract alike on all signatories. The National Wage Agreement of 1950 and all of its subsequent amendments have been the result of good faith collective bargaining and have involved only traditional and lawful labor union aims, policies and activities.

The U.M.W. contends that loans and investments of union funds in West Kentucky Coal Company were lawful loans and investments and were for lawful purposes and were not a part of any Sherman Act conspiracy. The U.M.W. denies that it ever influenced or sought to influ-

ence the management or coal sales policies of West Kentucky Coal Company. It denies that it was in any way a party to such sales policies. Furthermore, the U.M.W. contends that West Kentucky Coal Company never sought to depress the T.V.A. market and denies that West Kentucky Coal Company ever engaged in predatory pricing of coal to the T.V.A., but contends upon the contrary that West Kentucky Coal Company merely followed the market in submitting its bids and sought coal sales for legitimate business purposes and at legitimate business prices.

The U.M.W. contends that its activities in the Southeastern Tennessee coal fields have at all times been legitimate and traditional labor union activities and denies that they were part of any Sherman Act conspiracy. The U.M.W. contends that the plaintiffs have by their own conduct and activities fomented the labor trouble and unrest in the Southeastern Tennessee coal fields. The U.M.W. contends that despite the fact that it has at all times represented the overwhelming number of coal miners in the area, the plaintiffs have often failed and refused to negotiate collective bargaining agreements and when agreements were signed the plaintiffs have repeatedly refused to live up to the terms of their contract. The U.M.W. denies that it was in any way responsible for acts of violence or intimidation, but avers on the contrary that it always sought to restore peace and order to the coal fields and to require its members to live up to their contracts. The U.M.W. avers that the plaintiffs' failure to remain competitive in the T.V.A. coal market is the result of mismanagement, the attempt to mine coal by hand or other antiquated methods, the failure to keep abreast of modern production methods and other reasons unrelated to labor costs or

union activities. The U.M.W. denies that the plaintiffs, or any of them, are entitled to recover any damages against it in these lawsuits.

## LEGAL GUIDELINES

A necessary prelude to undertaking an analysis of the record in this lawsuit is a review of the federal antitrust laws and their application to labor unions. This lawsuit is founded upon Sections 1 and 2 of the Sherman Act wherein it is declared that "every contract, combination . . . or conspiracy in restraint of trade or commerce . . . is . . . illegal . . ." and "every person who shall monopolize or attempt to monopolize . . . or conspire with any other person . . . to monopolize any part of the trade or commerce . . ." shall be guilty of a violation of antitrust laws. (15 U.S.C., Sections 1 and 2)

The Sherman Act "was enacted in the era of 'trusts' and 'combinations' of business and of capital organized and directed to control the market by suppression of competition on the marketing of goods and business, the monopolistic tendency of which had become a matter of public concern." *Apex Hosiery Co. v. Leader*, 310 U.S. 469 at 503, 84 L. ed. 1311, 60 S. Ct. 982 (1940). The Act was not long in being applied to labor union activities. In 1908 the Supreme Court in *Leowe v. Lawler*, 208 U.S. 274, 52 L. ed. 488, 28 S. Ct. 301, held that the use of a secondary boycott by a union, directed at eliminating sales of non-union goods, in an effort to compel an employer to unionize his shop was a combination in restraint of commerce within the purview of the Sherman Act. This view of the matter was shortly changed by Congress, when in 1914 it amended and supplemented the Sherman Act with the Clayton Act.

Section 6 of the latter Act established as national polic the exempting of labor unions from the Sherman Act:

> "The labor of a human being is not a commodity or article of commerce. Nothing contained in the ant trust laws shall be construed to forbid the existence and operation of labor . . . organizations . . . or t forbid . . . such organizations from lawfully carry ing out the legitimate objects thereof . . ." (15 U.S.C., Sec. 17)

By 1921 the Supreme Court in *Duplex Printing Pres v. Deering*, 254 U.S. 443, 65 L. ed. 349, 41 S. Ct. 172, had interpreted the language of Section 6 of the Clayton Act as granting no immunity from antitrust lia bility "where (unions) depart from normal and legitima objects . . ." *Duplex*, and the line of cases following it, was met by further Congressional action in 1932 wi passage of the Norris-LaGuardia Act (29 U.S.C. 101). While worded as a restriction upon the use by federal courts of injunctions in cases growing out of labor dis- putes, it was soon recognized by the Supreme Court as having as its purpose the "underlying aim to restore the broad purpose which Congress thought it had formu lated in the Clayton Act but which was frustrated". *United States v. Hutcheson*, 312 U.S. 219, 85 L. ed. 788, 61 S. Ct. 463. By establishing the national labor policy in subsequent labor legislation (i.e., the Nationa Labor Relations Act, the Labor-Management Relations Act and the Labor-Management Reporting and Disclosu Act of 1959), Congress has further defined and restrict the scope of antitrust application to labor union activiti The problem for the courts in this area has come to be the reconciliation of two declared Congressional policie one seeking to preserve a competitive business econom

and the other seeking to preserve the rights of labor to organize and seek to better conditions of employees through collective bargaining.

The modern phase of the law in this respect may be said to have begun with the case of ***Apex Hosiery Co. v. Leader***, 310 U.S. 469, 84 L. ed. 1311, 60 S. Ct. 982. There the Court was confronted with an antitrust action predicated upon union violence in the course of a strike occasioned by an organizational dispute. In construing the substantive reach of the Sherman Act, the Court held that the statute was not intended to cover any activity, by a labor union or anyone else, unless it had or was intended to have a substantial effect upon "commercial" competition, such as by restricting production or prices or otherwise impairing free competition on the market. Furthermore, even where commercial competition was affected, "an elimination of price competition based on differences in labor standards is the objective of any national labor organization. But this effect on competition has not been considered to be the kind of curtailment of price competition prohibited by the Sherman Act." Id. at 503. The scope of labor's antitrust exemption thus became relevant only if its acts had the purpose or effect of injuring commercial competition in the market place, as distinguished from the labor market.

Next came ***United States v. Hutcheson***, 312 U.S. 219, 85 L. ed 788, 61 S. Ct. 463, where the Court addressed itself specifically to the labor union exemption from the antitrust laws as contained in the Clayton Act and the Norris-LaGuardia Act. The Court found that a strike and economic boycott were expressly exempt from Sherman Act liability, even though the union's dispute

was essentially jurisdictional rather than with the injured employer. "So long as a union acts in its self-interest and does not combine with non-labor groups, the licit and illicit under Section 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end for which the particular union activities are the means." Id. at 232.

In 1945 the case of *Allen Bradley Co. v. Local 3 I.B.E.W.*, 325 U.S. 797, 89 L. ed. 1939, 65 S. Ct. 1539, was decided. There the union had obtained an agreement whereby all electrical contractors were to purchase electrical equipment exclusively from local manufacturers employing union labor. The manufacturer in turn agreed to sell only to contractors who employed union members. The Court held that Congress never intended that unions could, consistently with the Sherman Act, aid non-labor groups to create such monopolies or control the marketing of goods and services. The Court concluded that "When unions participated with a combination of businessmen . . . to prevent all competition from others, a situation was created not included within the exemptions of the Clayton and Norris-LaGuardia Acts". Id. at 809.

Of controlling significance to the issues of the present lawsuit is the recent case of *United Mine Workers v. Pennington*, 381 U.S. 657, 14 L. ed. 2d 626, 85 S. Ct. 1585. The theories of the parties and the issues there involved bear a close similarity to the theories and issues here involved. Upon the same day the Supreme Court also decided the case of *Meat Cutters Union v. Jewel Tea Co.*, 381 U.S. 676, 14 L. ed 2d 640, 85 S.

Ct. 1596. These cases must be read together to understand their full import. Even then some uncertainty as to the full import must persist, as these cases produced five separate opinions expressing differing views. In *Pennington* the U.M.W. had sued a coal producer from the Northern Tennessee coal field for welfare fund payments. Pennington counter-claimed, alleging that the union had violated the Sherman Act by conspiring with certain large coal companies to drive smaller mine operators, including the defendant, from the coal industry. A verdict was returned against the U.M.W. Upon appeal the Supreme Court denied the U.M.W.'s claim to exemption from the antitrust laws for its activities.[1] The relevancy of the case to the issues here involved can best be stated by quoting the following excerpts from the opinion of Mr. Justice White, who wrote for a majority of the Court:

> "We have said that a union may make wage agreements with a multi-employer bargaining unit and may in pursuance of its own union interests seek to obtain the same terms from other employers. No case under the antitrust laws could be made out on evidence limited to such union behavior.[2] But we think a union forfeits its exemption from the antitrust laws when it is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units.

[1] The case was reversed upon the ground that the trial court had failed to correctly instruct the jury that any concerted union-operator effort to influence public officials with regard to minimum wages or other matters was exempt from the Sherman Act regardless of the intent or purpose of such effort.

2. Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it even though it may suspect that some of the employers cannot effectively compete if they are required to pay the wage scale demanded by the union. The union need not gear its wage demands to wages which the weakest units in the industry can afford to pay. Such union conduct is not alone sufficient evidence to maintain a union-employer conspiracy charge under the Sherman Act. There must be additional direct or indirect evidence of the conspiracy.

* * *

". . . This Court has recognized that a legitimate aim of any national labor organization is to obtain uniformity of labor standards and that a consequence of such union activities may be to eliminate competition based on differences in such standards . . . But there is nothing in the labor policy indicating that the union and the employers in one bargaining unit are free to bargain about the wages, hours and working conditions of other bargaining units or to attempt to settle these matters for the entire industry . . ."

* * *

". . . The policy of the antitrust laws is clearly set against employer-union agreements seeking to prescribe labor standards outside the bargaining unit."

* * *

". . . all such agreements between a group of employers and a union that the union will seek specified labor standards outside the bargaining unit suffer from a more basic defect, without regard to the predatory intention or effect in the particular case. For the salient characteristic of such agreements is

that the union surrenders its freedom of action with respect to its bargaining policy . . . After the agreement the union's interest would be bound in each case to that of the favored employer group. It is just such restraints upon the freedom of economic units to act according to their own choice and discretion that run counter to antitrust policy."

The *Jewel Tea* case followed a somewhat different aspect of the labor union exemption from the Sherman Act. There the employer, Jewel Tea Company, challenged the validity of a clause in its collective bargaining contract which prevented it from operating its meat counters after six o'clock in the evening or before nine o'clock in the morning. The plaintiff had agreed to the marketing-hours restriction only after threat of a strike. The trial court expressly found that, while some 9,000 other meat retailers had agreed to the marketing-hours restriction, the union had formulated the restriction and pursued its adoption alone and to serve its own interests. Adopting the trial court's finding that no union-employer conspiracy existed, Mr. Justice White stated:

"The issue in this case is whether the marketing-hours restriction, like wages, and unlike prices, is so intimately related to wages, hours and working conditions that the union's successful attempt to obtain that provision (unilaterally) . . . falls within the protection of the national labor policy . . . The concern of union members is immediate and direct."

The opinion concluded that a meat market's hours of operation was so closely related to "wages, hours and working conditions as to be within a mandatory subject of bargaining under federal labor laws and thus within the labor union exemption from the Sherman Act."

Extracting what appears to be the majority opinion of the Court in both the *Pennington* and *Jewel Tea* cases, the rule would seem to be that a labor union is exempt from the operation of the federal antitrust laws provided that it acts unilaterally, in the pursuit of its own self-interests rather than in combination or conspiracy with non-labor groups and provided further that its activities be in furtherance of a subject matter of immediate and legitimate union concern, such as wages, hours and working conditions, and not in furtherance of matters which are only of indirect concern to the union, such as prices and other marketing factors.

A more difficult problem is posed in attempting to extract from *Pennington* and *Jewel Tea* a statement of the present status of the rule with respect to antitrust liability of a labor union where the exemption does not apply. In his concurring opinion in *Pennington*, Justice Douglas appears to have read the majority opinion as holding that an industry-wide collective bargaining agreement which exceeds the ability of some employers to conform is prima facie evidence of a forbidden conspiracy that is a conspiracy whose purpose is to force some employers out of business. While Justice Douglas would require proof of predatory intent, i.e. that the purpose was to force some employers out of business—the prima facie rule suggested by him and concurred in by two other justices does not appear to have received support either in the opinion of Justice White or the dissenting opinion of Justice Goldberg. On the contrary, Justice White expressly held that a union, provided that it acts unilaterally, may lawfully adopt a uniform wage scale even though it may suspect that some employers could not pay the scale and continue to compete. Justice Goldberg would hold any union agreement relating to a man-

datory subject of collective bargaining, such as wages, should be immune from antitrust liability regardless of the economic consequences involved. To hold that a union, in doing what it lawfully is entitled to do thereby creates a prima facie case of illegal activity is a contradiction in terms. The opinions of Justice White and Justice Goldberg between them obtained the concurrence of six members of the Court. On the other hand, Justice White used language in his opinion in the *Pennington* case that would support a rule that no proof of predatory intent is required once it has been established that a union has lost its exemption by entering an agreement with one group of employers to seek specified labor standards from another set of employers not included within the bargaining unit. As stated by Justice White:

> "From the viewpoint of antitrust policy, moreover, all such agreements between a group of employers and a union that the union will seek specified labor standards outside the bargaining unit suffer from a more basic defect, *without regard to predatory intention or effect in the particular case*." (Emphasis added.)

If it was the intent of the foregoing language to remove the usual rule of reason applied in antitrust cases and substitute a per se rule, either with regard to the specific circumstances described or with respect to all cases in which the union is found to have lost its antitrust exemption, it would appear that the opinion is not supported by a majority of the Court. Neither the concurring opinion of Justice Douglas nor the dissenting opinion of Justice Goldberg supports such a per se rule. The opinions of Justice Douglas and Justice Goldberg between them obtained the concurrence of six members

of the Court.

By way of summary, while Justice White would require proof of the conspiracy between the union and the favored employers, he would appear to require no proof that the purpose was to put other employers out of business. On the other hand, Justice Douglas would require that it be made to appear that the agreement was "made for the purpose of forcing some employers out of business," but he would hold that any industry-wide collective bargaining agreement setting a wage scale that exceeded the financial ability of some employers to pay creates a prima facie case of conspiracy. Neither the per se rule of Justice White nor the prima facie rule of Justice Douglas appears to have received the support of a majority of the Court.

Turning now to other matters, the first and second sections of the Sherman Act embrace "every conceivable act which could possibly come within the spirit or presence of the prohibition of the law, without regard to the garb in which such acts are clothed". *United States v. American Tobacco Co.*, 221 U.S. 106, 55 L. ed 663, 31 S. Ct. 632. There is excepted from this broad statement of the rule activities seeking to influence governmental action, whether such activities are in concert with others or not and regardless of the motive or purpose that may have prompted such activities. Activities so directed are embraced within the constitutional right to petition governmental authority and are absolutely privileged from any antitrust consequence. *Eastern Railroad Conference v. Noerr Motors*, 365 U.S. 127, 5 L. ed 2d 464, 81 S. Ct. 523; *United Mine Workers v. Pennington, supra.* Evidence of such activity may nevertheless be competent to show the purpose and

character of prior or subsequent conduct.

The U.M.W. is here charged with a Sherman Act conspiracy. In this respect a conspiracy may be defined as a combination of two or more persons to accomplish by concerted action an unlawful or oppressive object, or a lawful object by unlawful or oppressive means. *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 84 L. ed. 1311, 60 S. Ct. 982; *National Fireproofing Co. v. Mason Builders Association*, 169 F. 259. It is not the form of the combination nor the means used, whether lawful or unlawful, but rather it is the anti-competitive result that the statute condemns. Acts done to give effect to the conspiracy may be in themselves wholly innocent acts. Yet, if they are part of the sum total of acts which are relied upon to effectuate the conspiracy which the statute forbids, they come within its prohibition. *American Tobacco Co. v. United States*, 328 U.S. 781, 90 L. ed 1575, 66 S. Ct. 1125.

The character and effect of a conspiracy are not to be judged by dismembering the conspiracy and viewing its separate parts, but rather by looking at the evidence bearing upon the conspiracy as a whole. As stated by the Court in *Continental Ore Co. v. Union Carbide Corp.*, 370 U.S. 690, 8 L. ed 2d 777, 82 S. Ct. 1404:

> "In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. '. . . (T)he character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *United States v. Patten*, 226 U.S. 525, 544 . . .; and in a case like the one before us, the duty of the jury was

to look at the whole picture and not merely at the individual figures in it.' *American Tobacco Co. v. United States*, 147 F. 2d 93, 106 (C.A. 6th Cir). See *Montague & Co. v. Lowry*, 193 U.S. 38, 45, 46, 48 L. ed 608, 611, 612."

One further subject needs to be given attention here and that is the standard of proof that must govern a proceeding involving a Sherman Act charge against a labor union. The burden of proof borne by the plaintiff is not the usual preponderance of the evidence rule applicable in civil cases generally. The requirement imposed by Section 6 of the Norris-LaGuardia Act is that of "clear proof" where a labor organization is a party to an action such as this. (29 U.S.C. 106)

In a recent case arising from this district, *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L. ed. 2d 218, 86 S. Ct. 1130, Justice Brennan, in writing the opinion of the Court, had this to say with respect to the meaning of the "clear proof" rule established by Section 6 of the Norris-LaGuardia Act:

"Although the statute does not define 'clear proof,' its history and rationale suggest that Congress meant at least to signify a meaning like that commonly accorded such similar phrases as 'clear, unequivocal and convincing proof.' The proponent in a civil case is not required to satisfy the criminal standard of reasonable doubt on the issue of participation, authorization or ratification; neither may he prevail by meeting the ordinary civil burden of persuasion. He is required to persuade by a substantial margin, to come forward with 'more than a bare preponderance of the evidence to prevail.' *Schneiderman v. United States*, 320 U.S. 118, 125, 87 L. ed. 1796, 1802,

63 S. Ct. 1333."

That the "clear proof" standard applies to an action wherein a labor organization is sought to be charged with a Sherman Act violation appears settled. *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 91 L. ed. 973, 67 S. ct. 775. See also *Lewis v. Pennington*, 257 F. Supp. 815 (D.C. E.D. Tenn., 1966).

## PARTIES

An identification of the parties plaintiff in these lawsuits and of the coal mining operations conducted by each, as well as an understanding of their relationship to one another, will be helpful at this point. Two companies control the major portion of the coal mining lands in the Southeastern Tennessee coal field. These two companies are Tennessee Products & Chemical Corporation (Tennessee Products) and Tennessee Consolidated Coal Company (Tennessee Consolidated). Tennessee Products is the party plaintiff in one of these lawsuits (Docket No. 4189). Tennessee Consolidated is not a party, but has a lawsuit pending in this court seeking similar relief (Docket No. 4178).

Tennessee Products was formed during World War I. It conducts a diversified operation in which coal mining is one part. It entered the Southeastern Tennessee coal field in 1938. In 1954 it became a wholly owned subsidiary of Merritt-Chapman & Scott, itself a national enterprise with diversified interests. Tennessee Products conducts its coal mining operations on 24,075 acres of land in the Southeastern Tennessee coal field leased to it by the Tennessee Coal & Iron Division of the United States Steel Corporation (T.C.I.). T.C.I. receives a royalty of 17¢ per ton for all coal mined and receives

a minimum guaranteed payment of $5,000.00 per month whether coal is mined or not. Tennessee Products is required to report and account for its mining operations each month, including those of any subcontractors.

Prior to World War II Tennessee Products operated one large hand loading mine. During and following the war a number of small truck mines were opened so that by January 1956 more than 100 such small mines were being operated. Most of them, and eventually all of them, were subleased. In 1956 the small mines produced 1,189,763 tons as compared with 396,383 tons for the large mine operated by Tennessee Products.

Tennessee Consolidated, while not a party to this lawsuit, is frequently referred to in the record. It was formed in 1905 and is principally owned and operated by two families, the Hamptons and the Roberts. It owns some 50,000 acres of land in Southeastern Tennessee, of which 38,700 acres are coal bearing. The same interests which own Tennessee Consolidated also own Whitwell Coal Company (Whitwell), although in different proportions, with Tennessee Consolidated itself being the largest stockholder in Whitwell. Whitwell acts as a sales agency handling bids to the Tennessee Valley Authority (T.V.A.) for the truck mines operating as lessees of Tennessee Consolidated property. For a time Whitwell conducted a strip and auger mining operation with equipment leased from Tennessee Consolidated. Grundy Mining Company (Grundy) is a wholly owned subsidiary of Tennessee Consolidated formed in 1959. After 1959 Grundy was the coal mining company for these related enterprises, leaving Tennessee Consolidated in the status of a land company.

In 1940 Tennessee Consolidated subleased a large

portion of its coal lands to the A. L. Henderson lease, a partnership made up of stockholders and officers of Tennessee Consolidated. The A. L. Henderson lease in turn subleased to a number of small truck mine operators, who paid royalty to the Henderson partnership and sold their coal through the Whitwell Coal Company.

Both Tennessee Products and Tennessee Consolidated maintain a number of truck mine operations on their respective properties. These truck mines operate under lease, some leases being verbal and others in writing. Some leases are from month to month, some from year to year, and others for longer terms. Tennessee Products and Tennessee Consolidated receive royalties from the lessees in varying amounts, such as 25¢ to 60¢ or more, for coal extracted and receive additional sums for insurance, engineering, sales and coal handling charges and mine supervision in some instances. There appears to have been considerable shifting of lessees and leasehold interests during the period here under consideration. It is these lessees from Tennessee Products and Tennessee Consolidated that constitute the major number of plaintiffs in Docket No. 3667. Some of the lessees operate one mine, some more than one, and some do not mine at all but sublease to or subcontract with others. Some truck mines operate in the workings of abandoned major mines and rob the remnants; others work in virgin coal land. On the average, it appears that truck mines work out their leasehold in from two to five years.

Mining methods in the truck mines run the gamut from primitive to advanced methods of mining. Some operators shoot from the solid, load coal by hand and haul it to the tipple by mule. Others are substantially

mechanized, using cutting machines, mobile loaders and continuous hauling from the face by chain conveyor or rubber tired shuttle cars. Many operate between these ranges.

Among the plaintiffs in Docket No. 3667 there are three exceptions to the foregoing leasing arrangements. One of these is George Ramsey; another is the J. H. Graham Coal Company, Inc.; the third is East Valley Coal Company.

George Ramsey is an individual doing business as Ramsey Coal Company. He conducts a strip mine operation, the only such operator among the plaintiffs. He commenced coal stripping operations in the Southeastern Tennessee coal fields in 1951. Originally he leased coal lands, but later purchased land and his operation has grown from a two or three man operation to one employing some 20 or more men.

J. H. Graham Coal Company, Inc., is a corporation organized by J. H. Graham, W. J. Travis and W. T. Morrison in 1958 and 1959. It had six rather small mines upon leased lands near Spring City, Tennessee. All of these were either subcontracted or subleased.

East Valley Coal Company was commenced in 1950 by Edward Nunley, the business being incorporated in 1957. This company operated a hand loading mine on the Prentice Cooper State Forest lands. Nunley, as noted below, also leased a mine from Tennessee Products in his individual name.

Of the remaining plaintiffs, ten were lessees of Tennessee Products and two were lessees of Tennessee Consolidated. A brief description of the remaining plaintiffs and their operations is as follows:

*Tennessee Products Lessees*: (a) Leon Nunley, an individual operating as the Leon Nunley Coal Company, commenced in 1953 and operated two hand loading mines. In 1959 he moved to another mine and set up a partially mechanized operation.

(b) Edward Nunley, an individual operating as the Edward Nunley Coal Company, commenced in 1955 with a single mine which he subcontracted to another to operate while he hauled coal.

(c) Paul Gibbs, an individual operating as the Paul Gibbs Coal Company, commenced in 1953 on Tennessee Products land. He had several hand loading mines, some of which he operated and others of which he subcontracted the operation while he hauled coal.

(d) The Ninth West Coal Company was a partnership organized in 1955 by W. J. Travis and J. H. Graham. It was incorporated in 1962. This company leased a number of truck mines in the Whitwell area which it subcontracted to various individuals to operate. All but one of these mines were hand loading mines.

(e) The A & R Coal Company, Inc., was a corporation formed by Allen Johnson and Richard Johnson, but later sold to J. H. Graham and W. J. Travis. It operated a mechanized truck mine in 1959 and 1960 in the Daus Mountain area.

(f) The M & T Coal Company was a partnership organized in 1953 by W. T. Morrison and W. J. Travis. It subleased mines in the Whitwell area from Tennessee Products which it in turn subcontracted to various individuals to operate. These were hand loading, non-mechanized mines.

(g) The M & G Coal Company was a partnership formed in 1958 by W. T. Morrison and J. H. Graham. It took over the mines of the M & T Coal Company. It had leases from Tennessee Products on hand loading mines in the Whitwell area, which mines it subcontracted to others to operate.

(h) Stephenson Brothers Coal Company, Inc., was organized in 1959 as the successor to a partnership between John Stephenson and Howard Stephenson, who had operated mines since 1946. This coal company leased a number of mines in the Mount Olive (Whitwell) area from Tennessee Products and operated some of the mines and subcontracted others. Coal was hand loaded in these mines.

(i) Lon Varnell, an individual doing business as the Tracy City Coal Company, leased a mine in 1959 from Tennessee Products. The mine was opened as a hand operated, non-mechanized mine, but later was partially mechanized with cutting machines and locomotives, but continued to load coal by hand. The operation of the mine was subcontracted first to Barney Johnson and Hembree Brown and later to Stanley Yarworth and Herman Johnson.

(j) Marshall Meeks leased mines from Tennessee Products commencing in 1954. Originally he subcontracted the operation of these non-mechanized mines, while he hauled coal. In 1959 he leased a mine which he mechanized and thereafter operated himself.

*Tennessee Consolidated Lessees*: (a) Howard Higgins subleased a mine in the Floyd Hollow area from the A. L. Henderson partnership, which partnership had in turn leased from Tennessee Consolidated. This was a hand operated mine. In 1958 the business was incorpo-

rated as the Howard Higgins Coal Company, Inc., to admit as silent partners two officials of Tennessee Consolidated who were later forced to withdraw, however, as their interest was discovered. In 1961 the Henderson lease was cancelled and Higgins leased directly from Tennessee Consolidated and operated the mine himself.

(b) The H. W. Flynn Coal Company, Inc., was organized in 1958 as the successor to Howard Willis Flynn, an individual. It subleased from the A. L. Henderson partnership, who in turn leased from Tennessee Consolidated. After cancellation of the Henderson sublease in 1961, it leased directly from Tennessee Consolidated. During all of the time it operated a hand loading, non-mechanized mine.

Defendant

The United Mine Workers of America is an international labor union first organized on January 25, 1890. It was organized to unite all workers employed in the mining and related industry. The highest official body of the Union is the International Convention which met every two years, but since 1942 has met every four years. In between conventions the International Executive Board of the Union has supreme authority. With respect to collective bargaining agreements between international conventions, an International Policy Committee or "Scale Committee" was established and any collective bargaining agreement negotiated by the national officers must have the approval of this committee. The International Union is divided into districts with each district being entitled to a member on the International Executive Board. Some districts are autonomous and elect their officers. Others are provisional and their officers are appointed

by the International President, subject to the approval of the International Executive Board. District 19, U.M.W. which has jurisdiction over the Southeastern Tennessee coal fields and has headquarters located in Middlesboro, Kentucky, is a provisional district. Its president, vice president and secretary-treasurer are all appointed by the International President. The District President in turn appoints the field representatives and organizers who work in the field in cooperation with local unions. John L. Lewis served as President of the International Union from 1920 until 1960 and has been President Emeritus since that time. Thomas Kennedy was President of the International Union from 1960 until his death in 1962. W. A. Boyle then became acting president and was elected President of the International Union in 1963. He has continued to serve in that position until the present time.

## 1950 NATIONAL BITUMINOUS COAL WAGE AGREEMENT

As noted above, the plaintiff contends that the anti-trust conspiracy herein sued upon commenced with the negotiation by the U.M.W. of the 1950 National Bituminous Coal Wage Agreement. The defendant denies this and contends that the 1950 Agreement was but a continuation and partial realization of the legitimate labor union aims and policies which it had pursued since its organization in 1890. An analysis of the evidence must accordingly be made both with respect to pre-1950 collection bargaining between the U.M.W. and the coal operators and the bargaining culminating in the 1950 Agreement.

## Pre-1950 Collective Bargaining

Industry-wide collective bargaining in bituminous coal mining had its beginning as far back as 1886 when a joint conference was initiated between the operators and miners of Ohio, Indiana, Illinois and Pennsylvania. The area covered by the joint conference has varied somewhat from time to time through the years and the tonnage represented has varied from 40% to 70% of the total national production of bituminous coal. This area has often been referred to as the "Central Competitive Field" and collective bargaining in the industry has been characterized by the fact that wage rates fixed in the central competitive field has substantially affected, if not largely determined, wage rates in all other bituminous coal fields in the United States.

It appears clear from the evidence that national uniformity in wage rates and labor standards in the coal industry has been a consistent policy and goal of the U.M.W. since its inception in 1890. The removal of differences in labor standards and wage rates as an element of competition within the bituminous coal industry has been the core of U.M.W.'s policy throughout the years of its existence. Wage cutting to meet price competition has been consistently opposed by the Union as being self-defeating in that it "generates a corresponding reduction in every other competitive coal field". Almost every International Convention has urged a uniform work day and a uniform wage scale in all classes of the same labor. Although sectional and regional differences in wages have historically existed in the coal industry, their elimination has been the uniform policy of the U.M.W.

In the early days an effort was made by the U.M.W.

to arrive at a wage base in the central competitive field that would then become the guideline of the various "outlying districts" as most fields outside the central competitive field were called. Slow but steady collective bargaining process appears to have been made by the Union until 1924. In that year a contract was negotiated at Jacksonville, Florida, (the "Jacksonville Agreement") with the central competitive field. The agreement soug to hold the line on wages by extending the existing scale of wages for a period of three years. Some outlying districts refused to go along, however, and severed relations with the U.M.W. In the competition that resulte operators in other districts, including the central competitive field, renounced their contracts. Collective bargaining was substantially curtailed and contracts ignored. Prices and wages went down and there was a general breakdown in the economic structure of the industry. The plight of the industry continued in this direction until 1933 when the industry was in a virtual state of chaos.

It should be noted here that early in the history of the industry there developed two methods of determining wage rates, one being a "tonnage rate" generally paid to those whose production could be measured in tonnage, and a "day rate" for all other workers. Sectional and regional differences in both of these rates existed from the beginning. By 1933 there was little or no uniformity in wages even within districts. For example, in Weste Pennsylvania wages varied from $3.50 per 10-hour day to $1.50 per 12-hour day for the same job classification In 1933 the Federal Government stepped in with the N.R.A. and sought to impose codes of fair competition on the industry. The codes recognized wage differen-

tials between districts, but not within districts. Also, in 1933 a collective bargaining agreement was negotiated (the "Appalachian Agreement") between the U.M.W. and operators representing approximately 72% of the national tonnage. The Appalachian Agreement established a day rate differential of 40¢ in favor of the Southern West Virginia, Eastern Kentucky, Virginia and Tennessee. Similar differentials in tonnage rates were also recognized.

Further efforts to stabilize coal marketing and production led to the passage of the Guffey Act by Congress. The purpose of this legislation was to establish codes on pricing, but the increasing demands for coal in the approaching World War II period led to the repeal of the Act.

In the Appalachian Conference of 1941, the U.M.W. demanded elimination of both the tonnage differential and the day rate differential between northern and southern coal fields. The Conference split over these negotiations, with the southern operators withdrawing. An agreement was then concluded with the northern operators eliminating the 40¢ daily wage differential, but the Union dropped the demand for elimination of the tonnage rate differential. The Union, however, agreed upon a "favored nation" clause which committed it to grant to the northern operators any more favorable terms that were negotiated by the Union with the southern operators. This insured elimination of the 40¢ differential in event a contract was negotiated with the southern operators. In negotiations with the southern operators this issue went to the National Defense Mediation Board and it recommended elimination of the 40¢ differential. The recommendation was accepted by the southern operators. The elimination of the 40¢ differential in 1941

did not completely eliminate the differential that had existed in the Southeastern Tennessee coal field, which differential continued to amount to 23¢ per hour on the day rates. A tonnage rate differential of 3¢ to 15¢ per ton also continued to exist. The $16.25 per wage day increase negotiated between 1945 and 1965 has been added across the board on the rates existing in 1941. Thus, a slight differential continues to exist in favor of the Southeastern Tennessee coal fields, although substantial reduction in the number of employees paid on a tonnage basis caused by mechanization and flat across-the-board wage increases have reduced the differentials to minimal significance. While differentials still exist, U.M.W. has virtually accomplished its historic policy of wage uniformity.

The period from 1943 through 1948 was a turbulent time indeed in the history of collective bargaining in the coal industry. A detailed account of these troubled times has been placed in the record, but it would serve little purpose to recount these details here. Suffice it to say that although wage increases were negotiated and the welfare fund was established during this period, there were seven national strikes or work stoppages during the period, accompanied by five Federal Government seizures and operation of the mines, and two Taft-Hartley boards of inquiry certifying the necessity of miners returning to work. In addition, there were injunctive, contempt and unfair labor practice charges and proceedings against U.M.W. by both the Federal Government and the coal operators alike. In 1946 criminal and civil contempt fines of $3,500,000.00 and $10,000.00 were imposed upon the Union and its President respectively. The Supreme Court affirmed these fines after reducing the $3,500,000.00 to $700,000.00.

In 1948 contempt fines totalling $1,420,000.00 were imposed upon the Union and its President.

It was during the period of government seizure and operation in 1946 that the U.M.W. Welfare and Retirement Fund was first established, the agreement sometimes being referred to as the "Krug-Lewis Agreement". A royalty of 5¢ per ton was established to finance the Fund.

Adding to the problems of the industry was the fact that in the post-war years a slackening of demand for coal produced a coal surplus. The market was shifting during this period, not only to other fuels but also within the coal industry. Whereas the Class I mines (those producing in excess of 500,000 tons per year) had supplied approximately 50% of the market during the war years, with the drop in demand for coal following the war, their share of the market dropped to 41.5% in 1947, 38% in 1948, and 29.3% in 1949.

1950 Collective Bargaining

The plaintiffs lay substantial emphasis upon statements made by John L. Lewis at the 1948 U.M.W. International Convention as being indicative of the conspiratorial motives or purposes then upon the Union's mind. These statements relate to the unstable condition in the bituminous coal industry, the problem of over production, the failure of management to give any unified or stabilizing leadership to the industry and the suggestion that "If the operators of this country cannot give any leadership upon the commercial side of this industry, the United Mine Workers of America can and will". Mr. Lewis then suggested the three-day work week as a means of equitable distribution of work opportunities. The sig-

nificance of this can only be judged in the light of all of the evidence, particularly that related to the 1950 contract negotiations.

The 1948 collective bargaining agreement expired or was terminated by its terms on June 30, 1949. Negotiations were held in three separate conferences: one at Bluefield, West Virginia, with the Southern Coal Producers' Association; a second at White Sulphur Springs, West Virginia, with northern operators; and a third with captive mine owners. These negotiations went on from May through November with no results. Following termination of the 1948 agreement and throughout the prolonged negotiations for a new contract, the Union applied a three-day work week east of the Mississippi River. The Union contends that this was merely a bargaining device in the nature of a limited strike. The plaintiffs contend that it demonstrated a Union concern to share the work opportunities among its members, which concern was surrendered by the Union as a part of the conspiracy with the northern operators which culminated in the 1950 National Bituminous Coal Wage Agreement.

There is nothing in the record, however, to indicate that the three-day work week was anything other than a bargaining technique. Its continuance was never an issue bargained for. Rather, the bargaining centered around the union shop, the limitation of welfare fund benefits to U.M.W. members and the clauses giving the Union control over working time, that is the so-called "able and willing" and "memorial period" clauses. The deadlock on these issues resulted in a Taft-Harley injunction against the Union. A further injunction, brought at the instance of the Federal Government under the

National Emergency Provision of the Taft-Hartley Act, ordered the Union to bargain in good faith. A contempt action thereunder was eventually brought against the Union and its President. It was under these conditions, and in compliance with these injunctions, and within two days after the President of the United States had asked Congress for legislation to permit seizure of the mines, that an agreement was finally concluded with the northern operators on March 5, 1950—an agreement known as the "National Bituminous Coal Wage Agreement of 1950". In short, the 1950 Agreement was negotiated under intense national interest, intense publicity, and intense supervision by and pressure from the Federal Government.

It is this agreement that the plaintiffs contend was the inception of the conspiracy between the U.M.W. and certain large coal operators to eliminate or suppress competition from the small coal operators. It is alleged that the wage scale and welfare fund royalties were set at a level so high that only the large mechanized mines, or mines readily capable of being mechanized, could meet them.

It is true that the 1950 Agreement was negotiated between the Union and the northern operators, with the representatives of the large mining interests being the chief negotiators for the operators. It is also true that the Court must consider the evidence as a whole and not fragment the 1950 negotiations from the evidence as a whole in determining the existence of an antitrust conspiracy. The Court can only say that upon the evidence to this point, it can discern no evidence of any incipient Sherman Act conspiracy. Certainly the testimony of the principal negotiators for both the Union and the operators is emphatic to the contrary. To conclude inferentially otherwise on the basis of the wage scale negotiated

is to engage in unwarranted speculation and is to disregard the undeniable right of the Union to seek to gear its wage scale to the ability to pay of the soundly solvent and not the marginal producer, of the ability to pay of the stronger and not the weaker coal operators. As stated by the United States Supreme Court in the case of *United Mine Workers v. Pennington*, 381 U.S. 657 at 665:

> "The Union need not gear its wage demands to those which the weakest unit in the industry can pay."

To conclude inferentially otherwise on the basis of statements of Union officials and operator spokesmen favoring stability in the industry is to equate stability to a Sherman Act conspiracy and instability to Sherman Act policy. The circumstances of the negotiations as outlined above give no support in reason to such a conspiratorial inference. Rather, quite to the contrary.

## COLLECTIVE BARGAINING FOLLOWING 1950

But, as correctly urged by the plaintiffs, the picture must be viewed as a whole, and not in isolated segments. The developments following 1950 must now be looked to, for the picture on the national scene took a much more tranquil course than in the turbulent 1940's. In June of 1950 the Bituminous Coal Operators Association (B.C.O.A.) was formed as a collective bargaining agency for the operators. At one time a total of 262 individual coal companies were included within its membership. These included the largest in the industry. They also included the smaller, for approximately one-half of the member producers produced less than 100,000 tons of coal a year. Those who stayed out did so by choice and not by reason of any exclusionary rule. The B.C.O.A. repre-

sented for bargaining purposes approximately one-half of the tonnage of bituminous coal mined in the United States. In evaluating the relationship of the B.C.O.A. to any alleged Sherman Act conspiracy, it should be noted here that of the alleged co-conspirators, namely Peabody Coal Company, Consolidation Coal, Island Creek Coal Company, West Kentucky Coal Company, Nashville Coal Company, Pittston Coal Company, and Pittsburgh-Midway Coal Company, only two were B.C.O.A. members, namely Consolidation and Pittston.

The 1951 amendment to the National Bituminous Coal Wage Agreement was negotiated between the Union and B.C.O.A. with a minimum of publicity and without any outward signs of industrial warfare. It is suggested that a new "two-man" bargaining technique was worked out between John L. Lewis, for the Union, and Harry Moses, for the B.C.O.A. It appears, however, that the Union Policy Committee, as well as the corresponding B.C.O.A. negotiating committee, played a part, albeit a less public and less prominent role than in prior negotiations.

The 1951 amendment provided for an increase of $1.60 per day in wages. The 1952 U.M.W.–B.C.O.A. negotiations followed much the same pattern as the 1951 negotiations. The 1952 amendment increased wages by $1.90 per day and increased the welfare fund payment from 30¢ to 40¢ per ton, where it has since remained. (The welfare fund royalty had been established at 5¢ per ton in 1946, raised to 20¢ in 1948 and to 30¢ in the 1950 contract.) The 1955 amendment provided for a two-step wage increase totalling $2.00 per day and vacation pay was increased from $100.00 to $140.00. The 1956 amendment provided for another two-step wage increase

totalling $2.00 per day and an increase in vacation pay from $140.00 to $180.00, as well as a three-day Christmas vacation with a $40.00 payment.

The negotiations of the amendments in 1952, 1955 and 1956 likewise followed much the pattern of the 1951 negotiations between U.M.W. and the B.C.O.A. That these more peaceful procedures suggest a Sherman Act conspiracy, however, is not reasonably to be inferred. Certainly no such clear inference can be drawn from the evidence. A contrasting peaceful and orderly pattern of collective bargaining following a prior pattern of industrial warfare and strife does not become suspect nor serve as an evidentiary predicate for a Sherman Act conspiracy charge. The Court can read no Sherman Act conspiracy into the U.M.W.–B.C.O.A. negotiations in 1951, 1952, 1955 and 1956.

It does appear that following the negotiations of the National Bituminous Coal Wage Agreement of 1950, the Union had in fact, if not in theory, nothing but the national contract and its amendments to offer to any other bargaining unit. Whether the Union was free, contractually or otherwise, to negotiate any other contract is a matter not yet considered. But that it was lawfully permissible for the Union to pursue such a course of wage and labor standards uniformity, so long as it did not do so conspiratorily with a segment of the industry cannot be doubted. ***United Mine Workers v. Pennington, supra.*** Neither the nature of the competition, the coal seam characteristics, the comparative adaptability to mechanization, nor other factors enhancing the problems of marginal coal producers can compel wage differentials nor form a basis for a court altering the legislatively permissible labor union policy of national

wage uniformity. The designation of the contract as a "national" agreement does not impute to it an antitrust character under existing law as it pertains to labor unions.

That the wage scales established in the 1950 National Bituminous Coal Wage Agreement were conducive to the mechanization of coal mines cannot be doubted. That some coal operators were better able to bear the cost of mechanization and that some mined coal deposits more suitable to mechanization than others likewise cannot be doubted. To conclude, however, that the wage scales negotiated in the national contract and its amendments were tailored to further an unlawful conspiracy to suppress or eliminate competition in the coal industry can be doubted. In this regard it is proper to note that wage increases in the bituminous coal industry in the post-war period have not been out of line with wage increases in other basic industries. In fact, there were fewer increases in the coal industry from 1950 through 1958 than in the steel, automotive, copper, rubber and oil industries. The average weekly earnings of bituminous coal miners, compared with that of two other basic industries, in 1950 and in 1964 were as follows:

| Industry | 1950 Average Weekly Earnings | 1964 Average Weekly Earnings |
|---|---|---|
| Bituminous Coal | $67.46 | $133.27 |
| Motor Vehicles | 74.85 | 137.70 |
| Steel | 67.95 | 138.77 |

Likewise, the hourly earnings of coal miners as compared with workers in the same industries were as follows:

| Industry | 1950 Average Hourly Earnings | 1964 Average* Hourly Earnings |
|---|---|---|
| Bituminous Coal | $1.9444 | $3.34 |
| Motor Vehicles | 1.778 | 3.24 |
| Steel | 1.703 | 3.36 |
| | | (*August only) |

As significant as wage scales undoubtedly have been in inducing mechanization in the bituminous coal industry, at least equally conducive to such mechanization has been the competition that coal has undergone from other fuels, such as gas and oil, in the period since 1940. Since World War II a veritable revolution has occurred in the fuel and energy market. The effect of this revolution upon the coal industry, both nationally and within the State of Tennessee, is graphically portrayed in a series of nine charts which are made Appendix "A" to this opinion. Suffice it to say, by way of summary, that whereas coal provided 47.2% of the total fuel energy consumed in the United States in 1940, as compared with 43.8% provided by crude oil, petroleum and natural gas, by 1964 coal's share had been reduced to 21.8% while the shares of other fuels had increased to 73.8% (Chart No. 1). In the same period (1940-1964) the industrial market for coal dropped from 30.3% to 23.1%, retail sales dropped from 19.6% to 4.6% and railroads dropped from 19.8% to almost nothing in 1964. Another significant influence in the coal market was the shift in sales from the more profitable retail and railroad markets, as shown above, to the highly competitive electric utility market. Whereas in 1940 electric utilities used 11.4% of total coal production, by 1964 they were using 51.7% of total coal production (Chart No. 2). All this has affected coal, not only percentage wise and price wise,

but during the 1950's almost 20% of the total bituminous coal market was lost to other fuels and energy sources. Whereas coal production in 1940 amounted to 461,000,000 tons, and increased to 516,000,000 tons in 1950, by 1958 it had declined to 410,000,000 tons. (Production had increased to 487,000,000 tons by 1964, a figure still below the 1950 production, however.)

It is apparent, at least in viewing the national picture, that coal was forced to mechanize to survive. The results have been dramatic. Employment in the industry has fallen from 416,000 men in 1950 to approximately 180,000 men in 1959 and to approximately 130,000 men in 1964. Average daily production by the American miners has increased from 4-1/2 tons per day in 1940 to 12 tons per day in 1961 and to 16.84 tons per day in 1964. (In Tennessee production went up from 3.38 tons per day in 1950 to 10.15 tons per day in 1964.) These figures compare with British production of 1.23 tons per day, 0.83 tons per day in Belgium, France and Austria, and 0.62 tons per day in India. A Japanese miner must work 18 days to produce the daily production of an American miner.

Undoubtedly the combination of the economic forces discussed above have borne heavily upon the marginal coal producer who has been unable to remain competitive in the face of rising costs, declining prices and heavy capital expenditures required for mechanization, as these pressures have likewise borne heavily upon the miner who found himself unemployed as a result thereof. But the economic pressures created by technological advances and the competition engendered thereby do not equate to a Sherman Act violation. Upon the contrary, the Sherman Act is designed to keep the market open so that such competitive pressures may operate.

Perhaps more significant to the plaintiffs' contentions is the fact that during the decade between 1949 and 1959 the loss in the share of the market experienced by the large mines (No. 1 mines) in the period just prior to 1949 was reversed and their share of the market increased from 29.3% in 1949 to 49.9% in 1959. Likewise, the profitableness of coal mining appears definitely to have favored the larger producers by 1959. It appears that in 1959 Peabody Coal Company and Consolidation Coal Company together realized a net of $43,000,000.00, while the rest of the industry suffered a net loss of $12,500,000.00. No clear antitrust significance can be drawn from these statistics. Their relationship to any Sherman Act conspiracy is certainly not patent, as is likewise true of the full U.M.W.—Coal Industry collective bargaining record between 1950 and 1958, all as hereinabove described. The Court being unable to infer any Sherman Act conspiracy from the record to this point, these matters must accordingly be considered subsequently in the light of the total record.

## THE PROTECTIVE WAGE CLAUSE

The plaintiffs contend that in the negotiations between the U.M.W. and the B.C.O.A. upon the 1958 amendment, the parties formalized the tacit agreement previously existing between themselves whereby the U.M.W. committed itself to impose and enforce the national contract without modification upon all coal operators with whom it subsequently negotiated.

It is alleged that this was agreed to in a provision of the contract commonly referred to as the "Protective Wage Clause". The Court must accordingly look to these matters.

The background to the inclusion of the Protective Wage Clause in the 1958 amendment appears to go back possibly as far as 1943. At that time the U.M.W. was complaining that signatory operators were subcontracting work to avoid the terms of the contract. During a period of government seizure that year, the National War Labor Board issued a directive that each agreement contain a provision that "operators agree that they will not lease any operating mines subject to this agreement as a subterfuge" to avoid the agreement's provisions. This anti-leasing clause was carried forward in each agreement through the 1951 amendment. The clause was somewhat expanded in the 1952 amendment and carried forward in this expanded form in the 1955 and 1956 amendments. The subject again came up for discussion in the 1958 negotiations and the U.M.W. sought to further expand the clause by including all forms of subcontracting having as its effect the evasion of the terms of the contract. In the ensuing negotiations the B.C.O.A. sought some reciprocal agreement in regard to enforcement of the contract by the Union.

The agreement reached on these matters has since been referred to as the "Protective Wage Clause". The Protective Wage Clause is rather lengthy in its full provisions. However, it is to Paragraph "A" of the clause that the antitrust violation here charged is particularly directed. Paragraph "B" of the Protective Wage Clause has to do with the obligation of the operators in regard to subcontracting and leasing. The subsequent paragraphs of the Protective Wage Clause have to do with the functioning of a joint industry contract committee in disposing of reported cases of violation of the Protective

Wage Clause.[2]

Before discussing the provisions of Paragraph A, however, it should be noted that the plaintiffs contend that a further relevant background to the negotiations of the Protective Wage Clause was the fact that there had been a decline in coal production in 1958, production declining from 493,000,000 tons in 1957 to 410,000,000 tons in 1958. There appears to have been some drop in prices, also. The plaintiffs suggest that these facts formed the motivation for tightening the conspiracy by including the Protective Wage Clause in the 1958 amendment. It is contended that the further wage scale increases negotiated in the 1958 amendment were also part of the conspiracy.

Paragraph A of the Protective Wage Clause provides as follows:

"During the period of this Contract, the United Mine Workers of America will not enter into, be a party

[2] The history of the Protective Wage Clause subsequent to 1958 was recounted in the record, but the Court does not deem this material to the present issue. That history reflects that the legality of the Protective Wage Clause under Section 8(e) of the Landrum-Griffin Act, the so-called hot cargo provision, was placed in issue before the National Labor Relations Board. A decision by that Board adverse to the legality of the clause was reversed upon appeal and the case was remanded for further findings. In the 1964 amendment to the National Bituminous Coal Wage Agreement, the Protective Wage Clause was eliminated, or so the Union contends. A provision was inserted, however, whereby operators agreed to payment of a welfare fund royalty of 80¢ per ton, in lieu of 40¢ per ton, upon all coal purchased by the signatory operators that was not produced in compliance with the national contract.

to, nor will it permit any agreement or understanding covering any wages, hours or other conditions of work applicable to employees covered by this Contract on any basis other than those specified in this Contract or on any applicable District Contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this Contract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all the parties signatory thereto."

The plaintiffs contend that the U.M.W. agreed with the B.C.O.A. by the foregoing language that it would not enter into a contract with any other party or bargaining unit upon any terms other than the National Bituminous Coal Wage Agreement. This, it is contended, amounts to a commitment by the Union with one set of employers to impose an agreed wage scale and a set of fixed labor standards upon all other employers with whom it negotiated. Not only does this forfeit its labor union exemption from the antitrust laws, in accordance with the ruling of the Supreme Court in the *U.M.W. v. Pennington* case, *supra*, but the plaintiffs contend that the Protective Wage Clause constitutes a per se Sherman Act violation under that case. In support of their contentions in this regard, the plaintiffs rely upon the following language from the opinion of Justice White in the *Pennington* case:

"We have said that a union may make wage agreements with a multi-employer bargaining unit and may in pursuance of its own union interests seek to obtain the same terms from other employers. No case under the antitrust laws could be made out on evidence limited to such union behavior. But we think a union forfeits its exemption from the antitrust laws when it

is clearly shown that it has agreed with one set of employers to impose a certain wage scale on other bargaining units . . .

* * *

"From the viewpoint of antitrust policy, moreover, all such agreements between a group of employers and a union that the union will seek specified labor standards outside the bargaining unit suffers from a more basic defect, *without regard to predatory intention or effect in the particular case*. For the salient characteristic of such agreements is that the union surrenders its freedom of action with respect to its bargaining policy . . . It is just such restraints upon freedom of economic units to act according to their own choice and discretion that run counter to antitrust policy." (Emphasis added)

The defendant, upon the other hand, contends that the language of Paragraph A of the Protective Wage Clause commits the Union only to enforce the contract uniformly as between parties signatory to the contract, but leaves the Union free to bargain upon any terms it sees fit with non-signatory operators. It is the position of the U.M.W. that, just as the operators who signed the agreement committed themselves under the provisions of Paragraph B not to evade or debase the labor standards set out in the agreement by subcontracting the purchase of coal produced at sub-standard levels or subleasing coal lands where the result would have different consequences, so the Union assured operators who were signatory to the agreement that it would not enter into or permit any agreement governing labor standards "applicable to employees covered by this contract" on any basis other than those specified by the contract. Under this construction of

the clause there would be no forfeiture of the Union's exemption under the antitrust laws in accordance with the above language of the Supreme Court in the *Pennington* case.

The Court is thus confronted with a construction of the meaning of the language used in Paragraph A of the Protective Wage Clause. The language used is not without ambiguity. The plaintiffs in effect concede as much when they state, "While the sentence does not affirmatively state that the Union will take this contract and force it on all other bargaining units," the language can only mean just that.

The law is well settled in this regard that where two constructions of a written contract are reasonably possible, preference must be given to that one which does not result in a violation of law. *Great Northern Railway Co. v. Delmar Co.*, 283 U.S. 686, 75 L. ed. 1349, 51 S. Ct. 578; *Perry Coal Co. v. N.L.R.B.* 284 F. 2d 910; *Williston on Contracts*, Sec. 236. Applying such a rule of construction to the language of Paragraph A of the Protective Wage Clause, it appears that should the language be given the construction contended for the plaintiffs, a violation of law would result, whereas should the construction contended for by the defendant be given, no violation would occur. The Court must accordingly adopt the latter construction and conclude that the Protective Wage Clause did not by its terms forfeit the Union's exemption from the antitrust laws. Upon this same issue the United States District Court, upon retrial of the *Pennington* case, reached the same conclusion with respect to the proper construction of the Protective Wage Clause. See *Lewis v. Pennington*, 257 F. Supp. 815 at 862 (D.C. E.D. Tenn., 1966).

Having concluded that the Protective Wage Clause does not constitute an express commitment upon the part of the U.M.W. to the B.C.O.A. not to bargain with any other coal operator upon any terms other than the national contract, this does not conclude the issue of whether the U.M.W. did in fact, though not expressly, so contract with the B.C.O.A. Were this case being tried upon the usual preponderance of the evidence rule applicable to civil cases, the Court would conclude that the U.M.W. did so impliedly agree. However, the standard of proof where a labor union is involved is "clear proof", as required by Section 6 of the Norris-LaGuardia Act, a standard different from the ordinary civil burden of persuasion. *United Brotherhood of Carpenters v. United States*, 330 U.S. 395, 91 L. ed. 973, 67 S. Ct. 775; *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L. ed. 2d 218; 86 S. Ct. 1130. The Court is of the opinion that the evidence upon the record in this case does not establish such clear and unequivocal proof as to warrant the Court in finding that the U.M.W. pursued its policy of uniformity of wage and labor standards by agreement with one or more employers, as distinguished from pursuing such policy upon its own. The only direct evidence in the record is to the effect that the Union pursued such policy upon its own, and not in agreement with any employer.

## THE U.M.W. INVESTMENTS IN WEST KENTUCKY COAL COMPANY

Apart from the collective bargaining activities of U.M.W. during the decade of the 1950's, or, more correctly, in addition to such activities, the plaintiffs contend that they were each damaged as a result of a Sherman Act conspiracy between the U.M.W. and West Kentucky

Coal Company, together with its subsidiary, Nashville Coal Company, to drive the plaintiffs from the T.V.A. coal market. This conspiracy is alleged to be part and parcel of the overall conspiracy. The plaintiffs' contentions with respect to this phase of the case, if sustained by the record, are sufficient when standing alone, however, to establish a Sherman Act conspiracy directed at the plaintiffs. These matters must therefore be examined with a view both to their separate significance and to their significance when viewed in light of the record as a whole.

In regard to the investment of U.M.W. funds in West Kentucky Coal Company and its subsidiary, Nashville Coal Company, the undisputed record reveals a most unusual series of financial transactions involving union funds. The undisputed record reflects that commencing in 1951 and continuing until 1963, when the U.M.W. finally disposed of its interest in West Kentucky Coal Company, the U.M.W. made a series of loans or investments with regard to the capital stock of West Kentucky Coal Company and Nashville Coal Company, the latter company having become a wholly owned subsidiary of West Kentucky Coal Company in 1955. By 1958 the U.M.W. had loaned or invested $25,458,156.37 in West Kentucky Coal Company and its subsidiary, Nashville Coal Company.[3] A substantial part of these funds

---

[3] By July 1, 1958, the U. M. W. had made the following investments in West Kentucky Coal Company and Nashville Coal Company:

| | |
|---|---|
| In Nashville Coal Company: | |
| 25,000 shares (Chertsey loan collateral) | $2,652,000.00 |
| 10,000 shares (Sagamore loan collateral) | $1,050,000.00 |
| 10,000 shares (Tower loan collateral) | $1,050,000.00 |
| TOTAL | $4,725,000.00 |

(Continued on following page)

were loaned to Cyrus Eaton or to holding companies and investment companies affiliated with Mr. Eaton. Mr. Eaton is a businessman having a wide variety of interests. The proceeds from these loans were to be used by Mr. Eaton and his associates to acquire stock in West Kentucky Coal Company, and later in Nashville Coal Company. These loans were made on demand notes, secured by the stock. The borrower could repay the notes at any time by surrender of the collateral and be relieved of any personal liability. Interest was payable on the notes only out of dividends, with provision in some notes that interest would be payable only out of one-half of the dividends. Loans of U.M.W. funds were made upon the same basis and for the same purposes to Mr. Colton, President of the National Bank of Washington, a bank in which the U.M.W. was a majority stockholder.

By means of the above loans and investments U.M.W.

---

(Continued from preceding page)

| | |
|---|---|
| In West Kentucky Coal Company: | |
| 85,400 common shares owned | $2,354,522.04 |
| 50,000 preferred shares owned | $2,500,000.00 |
| Pledge of assets on bank loan | $5,200,000.00 |
| 90,600 shares (Cyrus Eaton loan collateral) | $2,513,895.18 |
| 84,560 shares (Chertsey loan collateral) | $2,153,279.50 |
| 84,912 shares (Sagamore loan collateral) | $2,287,809.32 |
| 25,300 shares (Tower loan collateral) | 443,223.90 |
| 5,200 shares (Tower loan collateral) | 77,938.32 |
| 1,300 shares (Tower loan collateral) | 18,847.04 |
| 8,128 shares (Tower loan collateral) | 176,461.07 |
| 20,000 shares (Tower loan collateral) | 491,430.00 |
| 50,000 shares (Colton loan collateral) | $1,506,875.00 |
| 25,000 shares (Combs loan collateral) | $1,006,875.00 |
| TOTAL | $20,731,156.37 |
| Total in both companies | $25,456,156.37 |

acquired control of 480,400 shares of common stock in West Kentucky Coal Company out of a total of 857,264 outstanding common shares. It also acquired 50,000 shares of preferred stock having voting rights. Mr. Eaton and his associates assumed control of the Board of Directors of West Kentucky Coal Company during 1952 and 1953 with Mr. Eaton becoming Chairman of the Board in 1953. Immediately after Mr. Eaton assumed control, West Kentucky signed the National Bituminous Coal Wage Agreement, the first time in its history that it had signed a contract with the U.M.W.

Except for the above known facts and the uniform denial by both U.M.W. and West Kentucky officials of any control of management policies by U.M.W., the extent to which U.M.W. may have controlled the policies and activities of West Kentucky Coal Company and Nashville Coal Company as they relate to the T.V.A. coal market and to these plaintiffs can only be inferred. Furthermore, the reasons for which loans and investments were made in West Kentucky and its subsidiary, Nashville Coal Company, must likewise largely be inferred, as the reasons given by the U.M.W. for doing so will not bear scrutiny. As an investment of union funds, there was no real basis for the Union hoping for anything better than a recovery of its principal. The loans were made with no obligation to pay interest except out of profits, with profits to be shared with the borrower, with losses to be borne solely by the Union, with the borrower having no obligation to repay except by surrender of the collateral and with the borrower having the right to acquire the collateral at any time by payment of the loan. A more unsatisfactory form of investment from the viewpoint of the lender can scarcely be imagined.

For a union to purchase a controlling interest in a corporation to obtain the execution of a union contract is certainly a novel approach to collective bargaining. If this were the reason, it is difficult to understand why large investments and loans continued to be made after the union contract was signed. It is suggested that the welfare fund benefited greatly from royalties paid by West Kentucky after it became a signatory to the national contract. It appears, however, that the U.M.W. lost in excess of $8,000,000.00 upon closing out its loans and investments in West Kentucky in 1963. To justify these losses of union funds by royalties received by the Welfare Fund is certainly a novel form of accounting.

Whether the inference sought to be drawn by the plaintiffs from the U.M.W. loans and investments in West Kentucky and in Nashville Coal Company, namely that they were a part of a conspiracy aimed at destruction of the Southeastern Tennessee coal field as a source of supply for the T.V.A. coal market, is a matter the consideration of which should logically be deferred for the present. Whether such a purpose could be inferred becomes relevant only after a determination is first made that West Kentucky Coal Company and Nashville Coal Company did in fact engage in the predatory pricing of coal upon the T.V.A. coal market for the purpose of driving the plaintiffs from that market. Unless the evidence supports the conclusion that West Kentucky and Nashville themselves engaged in such antitrust activities there would be no purpose served in seeking to determine if the U.M.W. conspired to direct or control their policies to such ends. The Court will accordingly now look to these matters.

## The T.V.A. Coal Market

An understanding of the T.V.A. coal market is essential to an understanding of coal pricing upon that market and accordingly essential to an understanding of the activities of West Kentucky Coal Company and others in bidding and selling upon that market. By 1951 the Tennessee Valley Authority had largely completed the development of hydro electric power production to the extent of its economic potential within its area. In order to supply the electric power demands made upon its system during the next decade, it turned to steam plant construction. Illustrative of this increased demand is the fact that consumption of T.V.A. electric power by the United States Atomic Energy Commission increased by a factor of 14 between 1951 and 1956, until it was consuming more than 50% of T.V.A.'s total power production. Having evaluated the fuel market, the T.V.A. turned to coal exclusively to fuel its steam plants. The enormous and rapid development of its steam plant system was recounted in detail upon the trial. Suffice it to say that whereas steam accounted for only one-sixth of the T.V.A. power production in 1951, by 1961 three times as much electricity was produced by steam as by hydro power. At the end of that decade the T.V.A. had 12 steam plants in operation or under construction. Power production from these plants increased from 2-1/2 billion kilowatt hours in 1951 to 48 billion kilowatt hours in 1961 and the T.V.A. had become the world's largest coal purchaser, purchasing one-tenth of all of the coal sold upon the electric utility market in the United States. Annual coal consumption by the T.V.A. went from approximately 1,000,000 tons per year in 1951 to approximately 20,000,000 tons in 1961.

In planning the location of each steam plant the T.V.A. sought to locate each plant where it could draw upon two or more coal fields and be served by two or more modes of transportation. The Widow's Creek steam plant, located in Northern Alabama approximately 50 miles from the center of the Southeastern Tennessee coal field, is the plant principally involved in this lawsuit. It is served by the Southeastern Tennessee coal field located in Marion, Grundy and Sequatchie Counties. Coal also moves to the Widow's Creek plant from the Western Kentucky mines, both by train and by barge or a combination thereof. A small amount of coal moves to Widow's Creek from the Northern Alabama mines.

Apart from emergencies, the T.V.A. is required by law to purchase its coal upon competitive bidding. These bids are evaluated upon the basis of destination b.t.u. cost. That is, in evaluating bids the T.V.A. takes into account (1) the cost of coal at its origin, (2) the cost of transportation, and (3) the quality or b.t.u. content of the coal. The cost is normally computed by T.V.A. in terms of cents per million b.t.u.'s delivered to the plant at which the coal is to be burned.

The T.V.A. employs two basic types of purchases in obtaining coal. The first is its term contract program and by this method T.V.A. obtains the bulk of its coal supply. The second type is its spot purchasing program under which coal is purchased on a week to week basis. No spot contract awarded has a delivery term of more than four weeks. Under each of these methods of procurement, the low responsive bidders are awarded contracts.

The T.V.A. buys most of its coal on the term market and has in fact adopted a policy that requires at least

75% of its coal to be obtained by this method. By 1962 88% of its coal requirements were in fact being obtained by term contracts, with only 12% being purchased on the spot market. In the early years T.V.A. granted a few coal purchase contracts up to ten years in duration. Due to unsatisfactory price escalation experience, it then concluded it could get a better price by limiting the term of the contract to not less than six months nor more than three years and the amount of coal to not less than 500 tons nor more than 10,000 tons per week. This policy prevailed from about 1951 until 1957. At that time the T.V.A. began to look upon longer term contracts as its basic source of supply and began granting contracts with terms of four, five and ten years or longer.

In contrast to the term coal market in which bids are taken by T.V.A. at irregular intervals, usually two or three times a year, purchases of spot market coal are made by T.V.A. each month. The invitation reflects the amount of spot coal T.V.A. would like to buy during the succeeding month. The spot program is designed to gear receipts of coal more closely to actual needs. Coal burn is not uniform from day to day and it depends on the load at the individual plants, the available hydro power and many other factors. The spot program thus supplements the term program which is the primary source of supply and serves to keep the peaks and valleys of burn and receipt as low as possible.

Another factor to consider in seeking to understand the T.V.A. coal market is that the various steam plants and load centers of the T.V.A. system are connected by transmission lines and the system is thus an integrated system. This permits a determination to be made with regard to the most economic loading of the system. An electronic computer is used to make this determination

which results in the "capacity factor" at which various plants are operated—the capacity factor being the ratio of the average load at a given plant to the plant's maximum capacity. Loads vary at different places and at different times of day as well as at different seasons, hence the necessity for such determination to be made. On the basis of all relevant cost factors and load factors, the electronic computers determine the lowest total cost of generating power at any particular time and generation is shifted to those plants having the lowest cost. This materially affects the amount of coal used at any particular plant, as the cost of coal constitutes approximately 50% of the cost of producing and distributing electric power.

There are certain relevant conclusions that can be drawn from the foregoing with respect to the T.V.A. coal market. In the first place, it has provided a very large coal market in the Tennessee Valley area that was almost non-existent prior to 1950. This calls for steady supplies of very large quantities of coal. In the second place, all purchases of coal are made on the basis of public bidding open to all producers (excluding coal producers in violation of federal minimum wage and other relevant laws). The market is thus very competitive. In the third place, the market is highly cost conscious. B.t.u. cost at the steam plant where the coal is to be burned is the overriding factor in coal sales being made upon the T.V.A. market. Finally, since the T.V.A. system is integrated, and rather rapid shifts can be made from steam plants having higher costs of power generation to those having lower costs of power generation, a system-wide competitive effect is exerted on coal prices.[4] Finally, it is reasonable to conclude that

[4] This latter competitive effect is particularly significant with respect to the Widow's Creek plant, where a substantial cut-back in coal

(Continued on following page.)

T.V.A. coal buying policies and practices have at least in part been responsible for lower than average coal prices. The T.V.A. pays about 20¢ to 22¢ per ton less than other public utilities on the average.

Coal Pricing on the T.V.A. Market by West Kentucky Coal Company

A very detailed and voluminous record was established upon the trial of this case with respect to bidding upon the T.V.A. coal market over the period from 1953 to the date of the trial. Without attempting an exhaustive statement of this record, the Court will attempt to draw from it the facts that would appear to be of controlling significance.

The plaintiffs' view of this evidence is that the award of T.V.A. contracts to a number of Southeastern Tennessee coal producers at the April 15, 1954, bid opening called the attention of the U.M.W. to this market in particular, with the result that the U.M.W. accused the T.V.A. of "still pursuing its short-sighted and dog-eat-dog policy of buying coal." This not only brought U.M.W. fomented labor troubles to the Southeastern Tennessee coal field (to which the Court will give its attention in a subsequent portion of this opinion) but also brought the large coal companies, including West Kentucky Coal Company, who, acting in conspiracy with the U.M.W.,

---

(Continued from preceding page.)

purchasing occurred in 1956 and 1957 due to the fact that its coal costs had become the highest in the T. V. A. system. The Widow's Creek plant provided the nearest T. V. A. market for the Southeastern Tennessee coal field. Further expansion of the Widow's Creek plant occurred in 1960, but only after a reduced rail rate in 1960 had lowered coal transportation costs from the Western Kentucky field.

set out to drive the plaintiffs from the T.V.A. coal market by predatory pricing of coal upon that market. By dumping large quantities of coal upon the T.V.A. spot market, bidding at extremely low prices, in some instances below cost, West Kentucky and its subsidiary, Nashville Coal Company, as well as other large coal producers alleged to be in on the conspiracy, drove the T.V.A. spot market average price on coal at Widow's Creek plant from 21.37¢ per million b.t.u. in 1956 to 16.50¢ per million b.t.u. by 1958. The plaintiffs were thereby largely driven from the T.V.A. spot market. Similar predatory pricing by West Kentucky and other co-conspirators succeeded in capturing the bulk of the T.V.A. term market so that by 1964 West Kentucky and Peabody Coal Company together were shipping 10,215,000 tons per year on these contracts, which amounted to approximately 50% of the total annual purchases of coal by the T.V.A. The plaintiffs were thereby largely, if not wholly, driven from the T.V.A. term market. Thus, by a conspiracy directed both at raising the plaintiffs' labor costs to excessively high levels, while at the same time driving the price of coal upon the T.V.A. market to a level near or below cost, the U.M.W. and its co-conspirators have succeeded in driving the Southeastern Tennessee coal field from the T.V.A. coal market. Having accomplished their purpose, the U.M.W. sold out its interest in West Kentucky Coal Company in 1963, taking an $8,000,000 loss thereon.

As noted above, the plaintiffs do not confine their charges of conspiracy upon the T.V.A. coal market to the activities of West Kentucky Coal Company and its subsidiary, Nashville Coal Company. Rather, other coal companies are also alleged to have participated in one degree or another in the assault upon the T.V.A.

market. These include Consolidation Coal Company, The Pocahontas Coal Company, Island Creek Coal Company, The Pittston Company (Clinchfield Coal Company), Pittsburg-Midway Coal Company, and the Peabody Coal Company. Other than Peabody Coal Company, however, these coal producers are not believed by the Court to have had sufficient impact upon the T.V.A. coal market to deserve further attention. Their impact may be briefly summarized as follows:

*Consolidation Coal Company.*— During most of the period material to this case, Consolidation Coal Company was the largest coal company in the United States. However, it was never very important in the T.V.A. market. Although T.V.A. officials sought to interest Consolidation Coal Company in the market, the company failed to respond. Consolidation Coal Company acquired Pocahontas Coal Company during this period. Prior to that, Pocahontas had acquired the Moore mining properties in Anderson County, Tennessee. Coal from these mines has been sold to the T.V.A., though not on an extensive basis. Consolidation and Pocahontas together supplied T.V.A. less than 1% of T.V.A.'s coal during the period 1952 to 1962.

*Island Creek Coal Company.*—This company played no part in the T.V.A. market until it acquired West Kentucky Coal Company in 1963, this acquisition being made at the time the U.M.W. sold its interest in West Kentucky Coal Company to Island Creek Coal Company.

*The Pittston Company (Clinchfield Coal Company).*— This company has been of moderate importance to T.V.A.'s program. It operated a mine near Monterey, Tennessee, during much of the period and developed a mine in West Virginia (Moss No. 3 Mine), which supplied substantial

quantities of coal to the John Sevier steam plant located in upper East Tennessee. It appears that Clinchfield developed its Moss mine largely to supply a power plant built by the Appalachian Power Company in Virginia and accordingly T.V.A. has not obtained long term contracts for coal from Clinchfield. Clinchfield supplied approximately 5% of T.V.A.'s coal requirement during the period 1952-1962.

*Pittsburg-Midway Coal Company.*—This company supplied approximately 2% of T.V.A.'s coal requirements during the period 1952-1962. In this regard it compares with Tennessee Products & Chemical Corporation and Tennessee Consolidated Coal Company.

*Peabody Coal Company.*—Upon the other hand, Peabody Coal Company has been a quite significant participant upon the T.V.A. coal market, particularly in recent years It was not a significant supplier of coal to T.V.A. during the early 1950's. Following its merger with Sinclair Coal Company it became an important supplier of T.V.A. coal. As a result of a bid in 1959, a T.V.A. contract was eventually awarded to Peabody for the purchase of 65,000,000 tons of coal to be delivered over a period of years to a new steam plant, the Paradise plant, which steam plant was to be built adjacent to the Peabody property from which the coal was to be mined. By 1964 Peabody was shipping to T.V.A. coal on this contract and other contracts at the rate of 5,975,000 tons per year, more than 25% of the total T.V.A. coal purchases for that year. However, 4,000,000 tons per year of this total was shipped by Peabody under its T.V.A. contract for the Paradise steam plant.

Peabody produces most of its coal by strip mining in the states of Oklahoma, Missouri, Illinois, Indiana, Ohio and Western Kentucky. It serves most of the

important electric utilities in the middle western area and operates approximately 30 mines.

The plaintiffs contend that there were close operating and selling relationships between Peabody Coal Company and West Kentucky Coal Company. There is evidence that these two companies have done a substantial amount of business with each other, including the sharing of coal sales contracts, such as on the Tampa Electric Company contract which Peabody bid after West Kentucky had refused performance on an earlier contract which it had bid with the same electric company. However, the evidence does not sustain the conclusion that the relationship between Peabody and West Kentucky was anything other than a competitive relationship, nor that their dealings with each other were anything other than mutually advantageous business dealings. In the opinion of the Court, the evidence does not support a finding that Peabody was itself a party to any conspiracy either with West Kentucky Coal Company or with the U.M.W. Peabody was in fact not even a member of the B.C.O.A., with whom the U.M.W. is alleged to have conspired.

The present issue, in the opinion of the Court, therefore confines itself to the activities of West Kentucky Coal Company and its subsidiary, Nashville Coal Company, and their coal pricing upon the T.V.A. market.

That West Kentucky (and Nashville) have played a significant role on the T.V.A. coal market in recent years cannot be doubted. Just how substantial a role is demonstrated by the following table showing annual shipments made by them to the T.V.A. and showing the percentage of T.V.A. coal supplied by them for each of the years 1954 through 1964:

| Year | T. V. A. Total Receipts | Tonnage Shipped by West Kentucky & Nashville Coal Inc. | Per Cent of Company Shipments to Total |
|---|---|---|---|
| 1954 | 10,196,290 | 978,824 | 9.6 |
| 1955 | 14,377,000 | 1,298,923 | 9.0 |
| 1956 | 20,354,000 | 1,511,987 | 7.4 |
| 1957 | 19,581,879 | 963,384 | 4.9 |
| 1958 | 17,033,466 | 1,094,396 | 6.4 |
| 1959 | 17,808,900 | 1,336,870 | 7.5 |
| 1960 | 18,886,000 | 1,575,000 | 8.3 |
| 1961 | 18,674,000 | 1,681,000 | 9.0 |
| 1962 | 19,172,000 | 2,000,000 | 10.4 |
| 1963 | 22,141,000 | 3,394,000 | 15.3 |
| 1964 | 22,847,000 | 3,700,000 | 16.2 |

It should be noted, however, that prior to May 28, 1964, none of the above coal was shipped to the Widow's Creek plant, the point of most direct competition between the plaintiffs and West Kentucky.

Turning first to the activity of West Kentucky (and Nashville) upon the T.V.A. spot market, it is the contention of the plaintiffs that these companies dumped extraordinarily large quantities of coal upon the spot market at steadily declining prices, particularly during the period from 1956 through 1958, forcing the price from 21.37¢ per million b.t.u. in 1956 down to 16.50¢ per million b.t.u. in 1958. (In translating a b.t.u. price to a tonnage price, the quality of coal is a significant factor. However, on the average one cent per million b.t.u. is equal to approximately 25¢ per ton on a tonnage price basis.) The evidence does not sustain the plaintiffs' charge. Although West Kentucky bid in 1956, its bid in each instance was well above the market and it did not receive a single award. An analysis of

the bids in 1957 and 1958 reveals that West Kentucky bid 22 times on the spot market, but received only five awards, these successful bids all being from Nashville Coal Company's Uniontown mine to the T.V.A. Shawnee steam plant (Exhibit D-391). In not a single instance was West Kentucky the low bidder. In the first eight bids it was unsuccessful. On the ninth bid it got an award, but was the highest successful bidder. Its 10th, 11th and 12th bids were unsuccessful. Its 13th bid was successful, but again it was the highest successful bidder. Its 14th and 15th bids were unsuccessful. Its 16th and 17th bids were bid at the same price as the 14th and 15th bids, and were successful this time. In the 16th bid it was the highest successful bidder and in the 17th there were several lower bids. The 18th and 19th bids, at the same price as the four previous bids, were unsuccessful. The 20th bid was successful but was the second highest offer and there were no unsuccessful bidders on this solicitation. The 21st bid, at the same price, was unsuccessful. The 22nd bid was successful, but only by .02 mils per million b.t.u.

These figures show that on a declining spot market West Kentucky followed, but did not lead, the market and that on the few occasions that it was successful it was the highest, or nearly so, of the successful bidders.

Turning next to the activity of West Kentucky (and Nashville) upon the T.V.A. term market, it would appear that in each bid submitted West Kentucky's bid was well within normal limits of existing competition. The following table is reconstructed from the record, and reflects the bidding of West Kentucky on the T.V.A. term coal market in the period from 1954 through 1959 (Exhibit P-173):

| Date of Bid | T. V. A. Requisition No. | Price Per Ton | Evaluated Relation to Other Bids |
|---|---|---|---|
| 9/15/54 | 21-825509 | $2.90 | 13th from lowest |
| 9/15/54 | 21-825509 | $2.67 | 17th from lowest |
| 5/19/55 | 16-831970P | $2.32 | Others lower |
| 9/23/55 | 364 | $2.35 | 13th from lowest |
| 9/23/55 | 364 | $2.68 | 13th from lowest |
| 9/23/55 | 364 | $2.31 | Others lower |
| 9/23/55 | 364 | $2.72 | 22nd from lowest |
| 9/23/55 | 364 | $2.49 | 22nd from lowest |
| 7/12/56 | 11180 | $2.80 | 6th from lowest |
| 7/12/56 | 11180 | $2.71 | 16th from lowest |
| 11/16/56 | 16240 | $3.21 | Low bid |
| 10/24/57 | 23923 | $2.58 | 3rd from lowest |
| 10/24/57 | 23923 | $2.54 | 4th from lowest |
| 10/24/57 | 23923 | $2.75 | 3rd from lowest |
| 10/24/57 | 23923 | $2.84 | Tie for low |
| 5/20/58 | 99095 | $3.95 | 5th from lowest |
| 5/ 5/59 | 25 | $2.66 | 2nd from lowest |

The Court recognizes that the foregoing table does not give all relevant data necessary to make an exact evaluation of the West Kentucky bids in comparison with the market. For example, the price per ton is not very meaningful as it is not compared with other tonnage prices. Such a comparison would have little meaning, however, as the grade of coal or the b.t.u. content varies. Also, while tonnage prices in most instances are f.o.b. mine, in other instances the tonnage price includes transportation. The evaluations likewise do not reflect the full particulars in every instance, as the evaluations vary depending upon the steam plant on which the evaluation is made. Likewise, the quantities of coal involved are not reflected. Upon the other hand,

it should be recognized that the table includes only actual awards made to West Kentucky and does not include its unsuccessful bids. In reflecting that West Kentucky was underbid by other coal producers in every instance but two, the Court is of the opinion that the table gives a reasonably reliable picture of the nature of the competition faced by West Kentucky in bidding upon the T.V.A. term coal market for the period set forth.

Beginning in July of 1959 West Kentucky obtained the first of a series of four contracts for supplying large tonnages of coal to the T.V.A. upon long term contracts. All of these contracts were bid at $2.90 per ton f.o.b. mine. (One contract was let at $2.89 per ton after negotiations which gave West Kentucky additional latitude on coal size.) These contracts were designated as T-3, T-24, T-18, and T-6. The T-3 contract was obtained under Requisition 27 on bids opened in July of 1959 and was for delivery of 16,347 tons per week for 15 years to the Shawnee plant. The first award under the T-24 contract was obtained under Requisition 37 on bids opened in February of 1961 for delivery of 1,000,000 tons per year for ten years to the Gallatin steam plant. An award of a second million tons per year on this contract was made in January of 1963 for the remaining term of the contract. The T-18 contract was made in April of 1963, and was for delivery of 9,700 tons per week for ten years to the Shawnee steam plant. The T-6 contract was made in October of 1963 and was for delivery of 9,823 tons per week for ten years to the Gallatin steam plant.

It is to these bids at $2.90 per ton that the plaintiffs direct their principal charge that West Kentucky sold coal at or below cost upon the T.V.A. market in order to drive the plaintiffs from that market. In support of this

contention the plaintiffs rely upon evidence that reflects that whereas West Kentucky was operating at a substantial profit in 1951 and 1952, by 1958 and 1959 it was operating at a substantial loss and its stock declined in value from $25.00 to $11.00 per share. Additionally, some coal was supplied on these contracts from the Cherry Hill mine, which mine belonged to the Louisville Gas & Electric Company and was operated by the West Kentucky Coal Company under a contract whereby it had to pay the Louisville Gas & Electric Company $3.55 per ton for the coal.

The evidence does not appear to sustain the plaintiffs' contentions that the coal upon these contracts was offered and sold below cost. Rather, it appears that the $2.90 price was a matter of legitimate business judgment, with a view to making a profit on the coal while at the same time meeting competition in the market.

At the time West Kentucky first offered this coal to T.V.A. in 1959, it was in the process of working out a vein of coal in the Pleasant View mine designated as No. 11 coal. By driving down 90 feet it could reach a seam of coal designated as No. 9 coal and continue operating out of the same mine. To be able to sell the No. 9 coal in this way meant that the company could continue to utilize all of its capital investment and plant at the mine. If the company was unable to sell the coal, these items would largely be abandoned. The No. 9 coal unprepared did not have a market other than the utility market and even with preparation it did not enjoy a volume market. It appears that West Kentucky arrived at the price of $2.90 after discussion among the operating, sales, accounting and management people and these discussions reflected the opinion that the coal could be profitably marketed at $2.90 per ton.

It appears that upon a first mining of the No. 9 seam in 1959, under the T-3 contract, costs were $2.729 per ton before fixed administration costs of 20¢ per ton. There was evidence that these administration costs would largely have been incurred regardless of the contract. In 1960 total costs, including administration costs, were $2.925 per ton. While the $2.90 price was thus below cost in 1959 and 1960, there are two other factors to consider for these years. In the first place, the grade of coal turned out to be such that West Kentucky in fact realized $3.04 per ton under the contract. In the second place, this coal was mined during a period of development of the No. 9 seam, with resulting high costs. By 1961 total costs, including administration, were $2.697. In 1962 total costs were $2.72. In 1963 costs went up to $3.21 per ton, but this appears to have been due to a bad mine fire at the Pleasant View mine. This mine was later closed because of high costs, but the East Diamond mine was opened in 1963 and its total costs were $2.33 for that year and $2.723 for 1964. These cost figures would indicate that the $2.90 price was a matter of business judgment, and not predatory pricing to depress the T.V.A. coal market. This conclusion is further substantiated by evidence that the coal was offered by West Kentucky to other utilities at the same price. It is also substantiated by evidence of the price competition West Kentucky was faced with on the T.V.A. market.

The following table is reconstructed from the record and reflects the bidding of West Kentucky on the T.V.A. term coal market in the period from 1959 through 1963:

| Date of Bid | T. V. A. Requisition # | Price Per Ton (f. o. b. mine) | Evaluated Relation to Other Bids | Award Made |
|---|---|---|---|---|
| 7/27/59 | 27 | $2.90 | 4th from lowest | T-3 |
| 2/ 9/50 | 32 | $2.90 | 19th from lowest | None |
| 9/ 1/60 | 35 | $3.00 | 5th from lowest | None |
| 2/14/61 | 37 | $2.90 | 3rd from lowest | T-24 |
| 9/18/62 | 41 | $2.90 | 7th from lowest | T-18 |
| 1/15/63 | 42 | $2.90 | 3rd from lowest | None |
| 6/19/63 | 43 | $2.90 | 2nd from lowest | None |
| 10/15/63 | 44 | $2.90 | Low bid | T-6 |

While the above table does not reflect the fact that the bid evaluations, due to transportation costs, varied from one steam plant to another, the evaluations used were either those upon which an award was made, or in event West Kentucky was unsuccessful in its bid, upon the evaluation most favorable to the plaintiffs. In only one instance was West Kentucky the low bidder and this was at the Gallatin plant where it enjoyed a transportation advantage. At the Widow's Creek plant West Kentucky was never closer than third from the lowest bidder, and this was only after the Section 22 freight rate reduction had been placed into effect.

In this regard the plaintiffs sought to substantiate their conspiracy claim by reference to a freight rate reduction granted by the Interstate Commerce Commission in 1960 under Section 22 of the relevant statute. In that year The Louisville and Nashville Railroad Company and the Tennessee Valley Authority joined in requesting a rate reduction of railway freight rates for hauling coal from the western area of Kentucky to the Widow's Creek steam plant, the request being to reduce this rate from $2.40 per ton to $1.60 or $1.40 per ton, depending upon the volume hauled. This reduction was opposed by coal

operators in the Southeastern Tennessee coal field. The reduction was granted by the Interstate Commerce Commission.[5] There is no evidence that this had any relation to any conspiracy involving either the U.M.W. or West Kentucky Coal Company. In any event, since it involves an appeal to a governmental agency, it could not involve a Sherman Act violation. *United Mine Workers v. Pennington*, 381 U.S. 657, 14 L. ed. 2d 626, 86 S. Ct. 1585.

The Court concludes that the evidence fails to establish that West Kentucky Coal Company or its subsidiary, Nashville Coal Company, engaged in predatory pricing of coal upon the T.V.A. market. It rather appears that West Kentucky and Nashville based their prices upon legitimate business considerations and were attempting at all times to meet competition, rather than lead the market downward. Having so concluded, it becomes unnecessary to consider further the responsibility of the U.M.W., if any, for West Kentucky and Nashville's coal pricing policies.

That the competition faced by coal producers in the Southeastern Tennessee coal field on the T.V.A. coal market after 1956 from West Kentucky Coal Company and others bidding on that market was sufficient to largely drive them from the market by 1962 cannot be doubted. However, with respect to the Widow's Creek steam plant, the principal T.V.A. market for the Southeastern Tennessee coal field, it is only fair to note that the operators in that field have some competitive advantages. The Widow's Creek steam plant is located in Northern Alabama within 50 miles of the Southeastern Tennessee coal

[5] The T.V.A. predicated their 1960 expansion of the Widow's Creek steam plant upon the granting of this cut in freight rates.

field. The principal competitors for that market are located in Illinois, Indiana and Western Kentucky. The Southeastern Tennessee producers not only have a transportation advantage, but they generally produce a higher grade coal. The superior quality of the Tennessee coal gives it a price advantage of approximately 50¢ per ton on the average over that from Illinois, Indiana and Western Kentucky. In addition, it had a transportation advantage over West Kentucky of approximately $1.40 per ton prior to 1960. With the Section 22 rail rate reduction in 1960, this advantage was reduced to approximately 80¢ per ton. Accordingly, because of the quality and transportation advantages, a mine price of $2.90 per ton in Western Kentucky was equivalent to a mine price of approximately $4.50 per ton in the Southeastern Tennessee coal field on the T.V.A. coal market at Widow's Creek.

## THE U.M.W. AND EVENTS IN SOUTHEASTERN TENNESSEE COAL FIELD

The plaintiffs' contention that they were the victims of a conspiracy upon the part of U.M.W. and others to drive them from the coal market by the predatory pricing of coal upon their market is, of course, but one phase of their allegations against the defendant. In addition to this, as well as in addition to their other contentions with respect to the U.M.W. being a party to a conspiracy directed toward all small or marginal coal producers, of which they are but a part, the plaintiffs also contend that they were the victims of a Sherman Act conspiracy upon the part of the U.M.W. directed specifically at the Southeastern Tennessee coal field. In this phase of the case the plaintiffs rely upon the alleged refusal of U.M.W. to bargain with them, the refusal of U.M.W. to consider the limiting characteristics of the Southeastern Tennessee coal field, the attempt by the U.M.W. to force the national

contract upon the field and the obstructionist tactics engaged in and violence fomented by the U.M.W. to prevent the production of coal in this field. The Court will now turn its attention to these contentions.

## Characteristics of the Southeastern Tennessee Coal Field

An understanding of some of the characteristics of the Southeastern Tennessee coal field and of the mining practices followed in this field is essential to an understanding of the respective contentions of the parties as they relate to the present phase of the case. With respect to the mining practices followed in the field, the Court has partially dealt with these matters in its identification of the various plaintiffs and description of the manner in which the fields were organized for mining. Further attention must now be given to each of these matters.

There are three coal mining areas in Tennessee. One is the upper East Tennessee field. It lies in the counties of Anderson, Campbell, Scott and Morgan. The Monterey field is located in the middle portion of the State, near Monterey, Tennessee. The Southeastern Tennessee field, with which this lawsuit is concerned, is principally located in the counties of Marion, Grundy and Sequatchie.

The production of coal in Tennessee has varied greatly through the years. In this regard it has roughly followed the pattern throughout the nation in the past 25 years, at least until the last five years. These ups and down of production, both for Tennessee and for the United States as a whole, are set forth in Chart No. 3 to Appendix "A" to this opinion. The pattern of Tennessee coal produc-

tion has been that production rose to approximately 6,000,000 tons per year during World War II, declined to 4,000,000 tons by 1949, increased to approximately 9,000,000 tons by 1956 and declined to approximately 6,000,000 tons by 1959, that level of production being maintained through 1964.

The seam of coal in the Southeastern Tennessee coal field, called the Sewanee seam, is located in a mountainous area of the State at an elevation of approximately 1800 feet. It is a rather high grade metalurgical coal. That is, it is usable for making coke for metalurgical purposes. However, the field has certain geological disadvantages. The principal of these is the thinness of the seam. The average thickness of the Sewanee seam appears to vary from 36 to 42 inches, but the seam is highly irregular in this respect. The seam is subject to squeezes and rolls in a very irregular and unpredictable manner; that is, the thickness of the seam varies and these conditions have no pattern. The seam may in one place be squeezed to a matter of a few inches in thickness or may be entirely pinched out by rock. In other places the coal may be rolled into a thickness up to six feet. Hazardous roof conditions are often encountered, especially in the areas of the rolls. The topography of the area is largely mountainous. Accordingly, most mining must be done underground, and the field does not lend itself to strip mining due to excessive overburden except in limited areas.

These geological conditions place the Southeastern Tennessee coal field at a disadvantage with many other coal fields. For example, whereas only 32% of the coal produced in Tennessee is produced from seams over four feet thick, 65% of the coal comes from seams over four feet thick in the United States as a whole. The

irregular nature of the seam, its thinness and difficult roof conditions all pose problems for mechanization.

Geological conditions are among the matters claimed by the plaintiffs as rendering application of the National Bituminous Coal Wage Agreement to this field economically impossible, and therefore demonstrating the conspiratorial purpose of the U.M.W. in disregarding these conditions and seeking to force the national contract upon the field. This can more appropriately be evaluated after development of the history of the field in its relations with the U.M.W. Suffice it to say at this time that geological conditions have of course been a factor in competition with other coal producing areas and had their effect upon mining practices followed in the Southeastern Tennessee field. However, other conditions largely unrelated to geological conditions have likewise played a part. These include management policies, a general undercapitalization throughout the field, the pyramiding of leases, the nature of the T.V.A. coal market, labor practices and attitudes upon the part of workers and collective bargaining as practiced in the field.

## Collective Bargaining in the Southeastern Tennessee Coal Field

Turning to the history of collective bargaining between the U.M.W. and the operators in the Southeastern Tennessee coal field, it should be noted that the U.M.W. has at all times represented the clear, if not overwhelming, majority of the miners in the field. Accordingly, the majority of the plaintiffs were signatories to the National Bituminous Coal Wage Agreement throughout much of the period following 1950. Tennessee Products and Tennessee Consolidated performed in accordance

with the contract, at least until such time as it was cancelled in accordance with its terms. However, the practice of non-compliance with the contract terms was widespread among the truck mine operators. There was substantial evidence in the record that the U.M.W., through its field representatives, knew of the failure of the truck mine operators to pay the union scale and to pay the full welfare fund royalty, but that they instructed the operators just to "do the best they could" to satisfy the miners and keep the mines working.

In the summer of 1955 a work stoppage involving several of the plaintiffs occurred over failure of the truck mine operators to make the two-week vacation payment called for in the contract. In the course of this dispute U.M.W. raised the issue of the failure of the truck mine operators to pay the welfare fund royalty upon their full production. U.M.W. contends that it first learned of the failure to pay the full royalties due under the contract at this time and promptly sought enforcement. The plaintiffs contend that the U.M.W. attempted to enforce the contract commencing in 1955 after years of non-enforcement and that this change in policy was occasioned by U.M.W.'s conspiracy with the major coal companies. However this may be, an agreement was reached between the U.M.W. and the plaintiffs whereby the vacation pay issue was settled and the truck mine operators authorized Tennessee Products and Tennessee Consolidated, on future business, to deduct and remit to the Welfare Fund on coal sold through these companies on their T.V.A. contract. The miners went back to work after being off some two months or more.

This agreement as regards welfare fund payments was largely circumvented by the operators, however, by having the truck mine operators form their own asso-

ciation to bid on T.V.A. contracts rather than selling coal on the T.V.A. contracts of Tennessee Products and Tennessee Consolidated. The truck mine operators upon Tennessee Products leases formed themselves into the Mount Olive and the Holly Branch groups and the operators on the Tennessee Consolidated leases formed themselves into the Floyd Hollow Coal Company and Bee Branch Coal Company, and each secured T.V.A. contracts.

This time the failure of the operators to pay the welfare fund royalties resulted in a number of lawsuits being brought against them by the Welfare Fund in 1958 and 1959. Each of the plaintiffs other than Tennessee Products was sued. These suits to collect welfare fund royalties were eventually settled or dismissed, but were in some degree a motivating factor in the initiation of the present antitrust actions.

Throughout the period from 1958 on there have been sporadic turmoil and work stoppages in the Southeastern Tennessee coal field. These would sometimes affect but one mine or a group of mines. On occasion they would close most of the field. These disputes often arose over the miners' seeking to collect wage increases or vacation benefits provided for under the amendments to the national contract. For example, the 1956 amendment to the national contract provided for a $40.00 Christmas bonus. A strike involving a large number of truck mines occurred in December of 1956 and January of 1957 over non-payment of the bonus. More serious trouble was pending in connection with the working out of the large mines and the attempts at mechanization.

## Mechanization in the Southeastern Tennessee Coal Field

The history of mechanization at the Tennessee Products mines appears to be as follows. The old Whitwell Mine, a deep mine operated by Tennessee Products, worked out and was closed in June of 1946. It was a hand loading mine, employing 500 men and mining from 2200 to 2300 tons of coal per day. In the meantime, Tennessee Products had opened up the new Reels Cove Mine in 1943. Although it started out as a hand mine, it had largely been mechanized by 1948. It eventually achieved a production of 2500 to 2750 tons per day utilizing 250 men, or an average productivity of nine tons per man-day. By 1957 it became apparent that the Reels Cove Mine would soon work out. Operations and maintenance were gradually cut back until the Reels Cove Mine closed in 1962. In the meantime, a new major mine was projected by Tennessee Products at Morgansville, but failure of the parent company, Merritt-Chapman & Scott, to provide financing prevented this from materializing. Labor turmoil occasioned by miners released or about to be released from the Reels Cove Mine in seeking to assert seniority rights to jobs in the mechanized truck mines on Tennessee Products land at Griffith Creek, as more fully set forth hereinafter, was a substantial factor in the decision not to proceed with the Morgansville mine.

Commencing in 1957, Tennessee Products concluded to change its truck mines from hand mines to mechanized mines. This decision was prompted by the concern of the T.V.A. for increasing productivity in the Southeastern Tennessee coal field so that it might be a more competitive source of supply. A 10-year T.V.A. contract was accordingly awarded Tennessee Products predicated on

increasing productivity to 17-1/2 tons per man-day within two years. (It appears that productivity at the time was approximately 8-1/2 tons per man-day.) Failure to achieve such productivity would give the T.V.A. the right to cancel the contract. Accordingly, mechanized mines were opened in the Griffith Creek area in 1958. Picketing by Reels Cove miners seeking to assert seniority rights to the Griffith Creek jobs caused work stoppages. The U.M.W. supported the miners in these disputes. An agreement was eventually worked out. The required productivity increase was not reached, however, with the result that the T.V.A. contract was eventually cancelled. The failure to achieve adequate productivity was due in part to conditions created by the Union-backed seniority demands. The failure to successfully mechanize the Griffith Creek Mine was principally due, however, to erratic coal seam conditions and bad roof conditions in the mines.

The history of mechanization at the Tennessee Consolidated mines followed a somewhat similar pattern. Until abandoned in 1949, Tennessee Consolidated operated the Palmer Mines, employing about 525 miners and producing about 2500 tons of coal per day. The Palmer Mine was replaced in 1949 by the Coal Valley A. Mine, which ran until 1954. While the Coal Valley A Mine was still working, a companion mine called Coal Valley C Mine was developed. Mining methods at each of the three mines were progressively modernized in an effort to achieve greater productivity. At the Coal Valley A Mine productivity increased from seven to nine tons per man and by late 1956 Coal Valley C Mine had attained a productivity of 12-1/2 tons per man. It appears that through 1960 Tennessee Consolidated's mechanized operations kept pace with the national productivity average

for deep mines.[6] In 1957 the T.V.A. awarded a productivity incentive contract unto Tennessee Consolidated similar to the one awarded Tennessee Products. The purpose was the same, namely to encourage Tennessee Consolidated to increase productivity to 17-1/2 tons per man-day so as to provide the T.V.A. with a more competitive coal supply from the Southeastern Tennessee coal field. Soon after the contract got under way, absenteeism reached an incidence of 18% of the work force and seriously curtailed productivity. The Company complained to District 19, U.M.W., and the Union undertook corrective action with some success. In 1959 there were several work stoppages caused by such matters as picketing to force a non-union bulldozer operator off the job and in protest to the wage scale set for shovel and auger operators in a strip and auger operation opened by the Company.

The failure to achieve the productivity goals set in the contract resulted in the T.V.A. cancelling the contract as of December 31, 1959. Tennessee Consolidated attributes its productivity failure to absenteeism, work stoppages and coal seam conditions. No doubt each of these matters did affect productivity. With regard to the work stoppages, however, the productivity test period had expired prior to the major portion of the work stoppages. The T.V.A. appears to have attributed a major portion of the blame for failure to achieve the productivity goal to management.

On January 12, 1960, after termination of the T.V.A. contract, Tennessee Consolidated gave notice of cancellation of the National Bituminous Coal Wage Agreement

---

[6] National productivity increased from 6.43 tons per man-day in 1949 to 12.83 tons per man-day in 1960.

and all operations of the Coal Valley C Mine ceased on March 15, 1960. In the negotiations with the Union that followed, Tennessee Consolidated sought a wage scale tied to productivity. The U.M.W. refused. At this point Tennessee Consolidated organized a wholly owned subsidiary, Grundy Mining Company, and attempted to open the mines in the Gray's Creek area without a U.M.W. contract. These efforts were met with mass picketing accompanied by considerable violence, to which reference will be hereinafter made.[7] The result was that Grundy Mining Company was unable to get into operation during that year.

In April of 1961 Tennessee Consolidated entered into a contract with Allen & Garcia, an engineering firm with wide experience in the coal mining industry, to manage its mining operations. Allen & Garcia signed the National Bituminous Coal Wage Agreement and operation of the Coal Valley C Mine was resumed on July 10, 1961, but only after certain agreements were worked out with the Union relating to construction rates to be paid during an initial 10-week mine opening period and relating to seniority rights of former employees in the mine. The problem relating to seniority caused constant turmoil, the net result of which was that Allen & Garcia in many instances was not permitted to man its equipment with miners competent to operate the equipment. The major blame for this lies with the local union, but the U.M.W.

---

[7] These matters were before this Court in the case of **Gibbs v. United Mine Workers of America**, 220 F. Supp. 871, wherein the Court discussed them at some length. Upon appeal the verdict of the jury in that case was set aside by the Supreme Court for lack of "clear proof" of the U.M.W.'s responsibility. See **United Mine Workers v. Gibbs**, 383 U.S. 715, 16 L. ed. 2d 218, 86 S. Ct. 1130.

must bear a share of the blame. On June 6, 1962, Allen & Garcia closed the Coal Valley C Mine. The immediate cause for closing the mine was that a rock fall made the mine inoperable.

In July of 1962 Allen & Garcia started a new mine for Tennessee Consolidated, known as Gray's Creek No. 11 Mine. They continued to be plagued with the seniority problem in trying to staff the mine with men competent to operate the equipment, with the result that they gave notice of cancellation of the national contract on August 21, 1962, and one month later terminated their management agreement with Tennessee Consolidated. The record of the local union and of the U.M.W. in their dealings with Allen & Garcia was a short sighted and sorry one. However, there is no direct evidence that it was a part of any Sherman Act conspiracy upon the part of the U.M.W. Whether such an inference can properly be drawn should await a completion of the review of the evidence on this phase of the case.

Upon withdrawal of Allen & Garcia from the field, Tennessee Consolidated attempted to continue operation of its Gray's Creek mine through its subsidiary, Grundy Mining Company. In the meantime, starting in August of 1962, District 19 of the U.M.W. gave 60-days' notice of termination of the national contract to a number of truck mine operators on Tennessee Products and Tennessee Consolidated leases. The contracts were cancelled because the operators had failed to pay the royalties due the Welfare Fund and had failed to pay the vacation pay due under the contract.

Sewanee Coal Operators Association

At this point the truck mine operators formed the Sewanee Coal Operators Association for the purpose of

representing them in collective bargaining with the U.M.W. Grundy Mining Company was a member of the Association. Although Tennessee Consolidated and Tennessee Products were not members, it is obvious that they were influential in the formation of the Association. An agreement was effected between the Union and the operators to continue mining operations pending the outcome of the negotiations. A brief strike occurred in October 1962 at Grundy's mine, but the U.M.W. sought to get the miners back on the job. Over the next two or three months negotiations were held between the Association and the Union. In these negotiations the operators sought to get a sliding scale of wages to be based upon the varying degrees of mechanization in the mines. They also sought reduced welfare fund royalties. The Union sought to negotiate the national contract with security from Tennessee Products and Tennessee Consolidated for payment of the welfare fund royalties. These negotiations continued from October 1962 through January 1963 without results. However, on December 26, 1962, the miners in most of the Southeastern Tennessee coal field ceased working. An immediate reason for the strike was that Grundy Mining Company had refused to deduct union dues and had refused to recognize the Union Mine Committee. The failure to reach a contract was the overriding reason, however. While it does not appear that the U.M.W. called the strike, it is clear that it sanctioned and approved the strike.

The strike, which commenced on December 26, 1962, was accompanied by mass picketing at the road junctions leading to the major mine areas in the field. This strike was still continuing in 1965 at the time that proof was taken for this trial. The U.M.W. has continued support of the strikers by relief payments. Grundy Mining Com-

pany did not operate again until October 8, 1963, although it attempted to open in May of 1963 but was prevented from doing so by mass picketing. By February of 1963 all mines on Tennessee Products property had ceased operation due to the strike. No mining on these properties had been resumed by 1965. A great deal of violence, bloodshed and destruction of property has accompanied the strike. Much suffering, deprivation and want has occurred. The Southeastern Tennessee coal field remains a blighted area. Before turning attention to these matters as they are alleged to relate to the anti-trust issues in these lawsuits, it is necessary to digress for the moment to consider the special circumstances of the plaintiff, George Ramsey, in his dealings with the U.M.W.

George Ramsey, doing business as Ramsey Coal Company, has conducted strip mining operations upon his own land since about 1954. Originally he sold all of his coal to the T.V.A. and this continued until 1959. At that time he began selling to other customers and by 1964 had ceased selling to the T.V.A., getting better prices for his coal from other customers. Ramsey was a signatory to the National Bituminous Coal Wage Agreement from the time he began operations until 1960. In 1958 he was sued by the Welfare Fund for non-payment of royalties and the following two years his payments to the Welfare Fund exceeded his profits. In fact, he lost money in 1960. In that year his employees withdrew from the U.M.W. and joined the Southern Labor Union and he terminated his U.M.W. contract. He has managed to keep his operations going throughout the troubles elsewhere in the field and as a result taken over a substantial part of the local market for coal in the area.

## Violence in the Southeastern Tennessee Coal Field

The evidence in this case reflects once again that the "history of the bituminous coal industry is written in blood as well as in ink". *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 84 L. ed. 1263, 60 S. Ct. 907. In reviewing this evidence, it must be borne in mind that the presence or absence of violence in the record is relevant only as it may be charged to the U.M.W., and then only as it may bear witness to a conspiracy to monopolize the coal industry or to drive the plaintiffs from the industry by predatory competitive means. As stated by the Supreme Court in the case of *Apex Hosiery Co. v. Leader*, 310 U.S. 469 at 513:

> "Restraints not within the Act (i.e., Sherman Act) when achieved by peaceful means, are not brought within its sweep merely because, without other differences, they are attended by violence."

The responsibility of the U.M.W. for such violence, as well as the relevance of such violence to a Sherman Act conspiracy, must be "clearly shown."[8]

The evidence with respect to picketing and violence directed toward Tennessee Consolidated and Grundy Mining Company during the year 1960 was much the same upon this trial as in the trial before this Court in the case of *Gibbs v. United Mine Workers of America*, 220 F. Supp. 871. Although no Sherman Act charge

---

[8] See Section 6 of the Norris-LaGuardia Act, 29 U.S.C. 106; **United Brotherhood of Carpenters v. United States**, 330 U.S. 395, 91 L. ed. 973, 67 S. Ct. 775; **United Mine Workers v. Pennington**, 381 U.S. 657, 14 L. ed 2d 626, 85 S. Ct. 1585.

was there involved, as heretofore noted, the Supreme Court set aside a jury verdict for the plaintiff in that case upon the ground that "clear proof" of U.M.W.'s responsibility for such picketing and violence did not appear in the record. *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L. ed. 2d 218, 86 S. Ct. 1130. It accordingly would serve little purpose to further pursue the same evidence here.

With respect to the strike which occurred on December 26, 1963, and which has been in effect since that date, the evidence is clear that the U.M.W. has sanctioned and approved the strike. The Union concedes as much. It is likewise clear that the strike has been accompanied by much mass picketing, violence and property destruction. Both sides in the dispute have suffered the effects of such violence, but the operators and those miners who sought to cross the picket lines have suffered much the worse of the violence. Without attempting to itemize the record, it may be said that homes were shot into, burned or dynamited by unidentified assailants. Coal was dumped upon the highway. Trucks and cars were fired upon numerous times. Power poles and mine equipment were dynamited. Coal tipples were burned and mine guards were fired upon. Operators were forced to abandon their mines and equipment for reasons of personal safety, with the mines and equipment suffering heavy losses from mine flooding and vandalism. Several men were killed. One intrepid operator was the intended victim of dynamite thrown into his yard from a speeding car, but he seized the lethal bundle and removed the cap just seconds before it went off. While it certainly adds no luster to the occasion, there were victims to violence upon both sides. The home of the U.M.W. District Representative was damaged by dyna-

mite. Four local union halls were burned. Union men were shot at and union homes were burned.

The relevance of the foregoing matters to present issues does not appear in the record, however reprehensible and otherwise unlawful they obviously were. For in not a single instance was an act of violence traced to an identifiable assailant. Such assailants were described in the record only in anonymous terms. They could be referred to only in the third person. The acts were those of unknown persons. Upon this record the U.M.W. could not be held chargeable for the violence, even were the standard of proof required that of the usual civil case. Even were members of the local unions identified as the perpetrators of the wrongs suffered by the plaintiffs, in the absence of proof that the U.M.W. authorized or ratified the conduct, it could not be held responsible therefor. "The acts of the individual members no more bind the union that they bind another individual member unless there is proof that the union authorized or ratified the acts in question." *United States v. White*, 322 U.S. 694 at 702, 88 L. ed. 1542, 64 S. Ct. 1248.

Moreover, neither picketing, whether lawful or unlawful, nor violence, however heinous, can of themselves and without more constitute a Sherman Act violation, whatever other legal remedies may exist. While they can be means of accomplishing an antitrust conspiracy by a union, and thus may, in company with other relevant evidence, be themselves evidence of such a conspiracy, the conspiracy must be made to appear by more than picketing or violence. In short, picketing and violence are not per se evidence of a Sherman Act conspiracy. Thus the strike, ratified by the U.M.W., and picketing, to the extent that it received U.M.W. approval, and not

the violence unconnected upon the record with the U.M.W. may be looked to as they may or may not demonstrate the purpose of the U.M.W. to conspire with others to impose the National Bituminous Coal Wage Agreement upon the Southeastern Tennessee coal field. The record in this regard fails to show any direct evidence of a Sherman Act conspiracy. Whether such an inference can be drawn must depend upon a review of all of the evidence upon the present phase of the case, to be followed by a review of all of the evidence upon all phases of the case.

Upon review of the evidence as it relates to the Southeastern Tennessee coal field and of the U.M.W.'s activities therein, the following conclusions appear to be clearly supported by the evidence:

(1) To operate successfully the producers in the Southeastern Tennessee coal field must be able to compete and survive on the T.V.A. coal market. Since 1954 50% or more of all coal produced in the State of Tennessee has had to find its market with the T.V.A. That figure reached as high as 78% in 1956 and by 1962 was still at 64.3%.

(2) Due to the geological conditions, the Southeastern Tennessee coal field cannot achieve a level of productivity equivalent to that of its principal competitors on the T.V.A. coal market. This competitive disadvantage is offset in part by the transportation and quality advantages which the field has over its principal competitors in the T.V.A. market at the Widow's Creek steam plant.

(3) In the period since 1960 the coal operators in the Southeastern Tennessee coal field have been unable to compete and survive in the T.V.A. coal market under the National Bituminous Coal Wage Agreement. While in many instances this appears to have been due to anti-

quated mining methods and equipment or other causes, the fact nevertheless remains that since 1960 there has not been a single instance of a successful coal mining operation in the Southeastern Tennessee coal field under the National Bituminous Coal Wage Agreement and this in spite of the fact that the only feasible alternative facing most coal operators in the area was to operate under the national contract or go out of business.

Further than this the Court cannot go. Clear proof does not appear, either directly or by inference, that the U.M.W. acted other than unilaterally in furtherance of its own interests and purposes in its activities in the Southeastern Tennessee coal field in the period here under review. In this regard the plaintiffs rely upon the defendant's advocacy of mechanization as a solution to the operators' competitive difficulties as one element of proof demonstrating a conspiracy, in that the U.M.W. was in fact attempting to force mechanization upon a coal field which it knew to be unsuited by geology therefor and at a rate that the U.M.W. knew was impossible for all but the largest coal operators in the nation. This contention does not appear to accord with the evidence. In the first place, it does not appear that mechanization would be ineffective in rendering the Southeastern Tennessee coal field competitive. Both Allen & Garcia and Grundy Mining Company appear to have been well on the way toward raising productivity to competitive levels by mechanization when their efforts were thwarted or halted by seniority and strike difficulties. In the second place, it does not appear that mechanization is beyond the economic capacity of all but the larger producers on the national scene.

Of course, the existence of a conspiracy is not a prerequisite to a removal of a labor union's exemption from

the antitrust laws. Under the rule set forth in the case of *Meat Cutters Union v. Jewel Tea Co.*, 381 U.S. 676, 14 L. ed 2d 640, 85 S. Ct. 1596, it may lose its exemption, even though it acts unilaterally, if it pursues a course violative of the Sherman Act and not directly and immediately related to a mandatory purpose of collective bargaining, such as wages, hours and working conditions. Thus a labor organization, by advocacy of or opposition to mechanization per se, even though acting unilaterally, might come within the rule laid down in the *Jewel Tea* case and might thereby expose itself to an antitrust charge. However, here it appears conceded by the plaintiff that mechanization of the mining industry was but the necessary consequence of the U.M.W.'s seeking a uniform national wage scale at a level alleged to be excessively high. As to the opposition to mechanization experienced by Allen & Garcia, this appears to be directly related to the Union's interest in the seniority issue. Both wages and seniority are legitimate subjects of collective bargaining.

With respect to the other evidence on this phase of the case, the evidence does not demonstrate that the U.M.W. acted in conspiracy with employers elsewhere in its dealings with the plaintiffs and others in the Southeastern Tennessee coal field.

Though the law may provide other remedies for the interruption, hindrance or obstruction of business by mass picketing, violence or other activity in which a union may be found responsible, the antitrust laws provide no part of that remedy unless the union by its activity exceeds its antitrust exemption, such as by acting in furtherance of a conspiracy. Lacking such a conspiracy, the U.M.W., by reason of its labor exemption, was free to pursue its policy of national uniformity in wages and

working conditions without violation of the antitrust laws. So long as it acted unilaterally, and not in conspiracy with other coal producers, the U.M.W.'s efforts to achieve national wage uniformity could not be accused of having an antitrust taint. Under such circumstances the U.M.W. could not be required, as a means of escaping antitrust liability, to bargain for labor standards, wages or working conditions that would improve the plaintiffs' competitive position by the reduction of wages or labor standards, by gearing wages to the status of mechanization or its lack, or by tying wages to productivity.

## CONCLUSION

There remains to be accomplished an evaluation of the full record upon the trial of this case, when viewed as a whole, rather than when viewed in segments as has thus far been necessary. Having taken a look at the individual figures one by one, it is now the duty of the Court to look at the panorama. *American Tobacco Co. v. United States*, 147 F. 2d 93.

The central relevant inquiry at this point is whether all of the evidence, when viewed as a whole, clearly manifests a union-businessmen combination to achieve a predatory anticompetitive end. Otherwise the union activity here complained of would come within the Congressionally established labor organization exemption to the antitrust laws.

The plaintiffs' contentions, reduced to their essence, are that the U.M.W., while purporting to act for the elimination of substandard wages, in reality conspired with the large coal producers of the nation to drive from the coal industry large segments of that industry, includ-

ing the plaintiffs, who were not favored by geography, geology and economics. This conspiracy originated at the time of the negotiation of the 1950 National Bituminous Coal Wage Agreement between the U.M.W. and the major operators, the parties acting under the guise of giving "stability" to the industry. Thereafter steps were repeatedly taken to tighten the conspiracy, including large successive wage and fringe benefit increases, the payment of which would be possible only by rapid mechanization which in turn could be accomplished only in the favored coal fields. Another bold step in tightening the conspiracy was the execution of the Protective Wage Clause in the 1958 contract amendment. Increased organizational and enforcement activity was engaged in by the U.M.W. to apply the labor-cost squeeze upon the segment of the industry scheduled for elimination. The rapid expansion of the T.V.A. market in the 1950's called the U.M.W.'s specific attention to the Southeastern Tennessee coal field and the plaintiffs. Thereupon large coal companies, with heavy financial support from the U.M.W., dumped large quantities of coal upon the T.V.A. market to drive prices down. To still further tighten this labor cost-market pricing squeeze upon the plaintiffs, the U.M.W. eventually fomented strikes, engaged in mass picketing and resorted to violence. In this manner the defendant succeeded in its efforts to drive the plaintiffs from the coal industry.

To support the plaintiffs' theory of the Sherman Act conspiracy, the plaintiffs must rely entirely upon circumstantial evidence, with the sole exception of the proof relating to the Protective Wage Clause. The Court has previously dealt with the Protective Wage Clause and found no conspiracy there. All of the direct evidence in the record expressly denies the plaintiffs' contentions

of a conspiracy. Every officer of the Union who testified, as well as every representative from the coal industry alleged to be in on the conspiracy, denied its existence. While this testimony must be weighed in the light of the self-interests of the witnesses, it cannot be ignored. *Moore v. C & O Ry. Co.*, 340 U.S. 573, 95 L. ed. 547, 71 S. Ct. 428; *Benton v. Blair*, 228 F. 2d 55. To overcome it, the Court must wholly resort to inferences to be drawn from the remaining proof. In this regard the Court cannot overlook the fact that while reasonable inferences are a sufficient basis to support a finding of antitrust violation, speculations and conjecture are not. *United States v. Morgan*, 111 F. Supp. 621; *The New Grant Patten Milk Co., Inc. v. Happy Valley Farms, Inc.*, 222 F. Supp. 319. The separation of reasonable inference from speculation and conjecture is not easily accomplished, for there is no fixed line at which the two are separated. The Court likewise cannot overlook the fact that the standard of proof imposed upon the plaintiffs is that of "clear proof" rather than a mere preponderance of the evidence. *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L. ed. 2d 218, 86 S. Ct. 1130. Finally, it must be borne in mind that to be relevant, an inference must relate to the existence or execution of a U.M.W.–industry antitrust conspiracy and not be merely an inference with regard to U.M.W. responsibility for the plight of the plaintiffs.

Reviewing the evidence as a whole in this light, the Court is unable to find that the evidence clearly reflects that the plaintiffs were the victims of any conspiracy between the U.M.W. and any coal operators or other non-labor organization to eliminate or suppress competition in the coal industry or to eliminate or suppress the production and sale of coal by the plaintiffs. While

many inferences favorable to the plaintiffs' contentions can reasonably be drawn from the evidence, in every instance a no less equally reasonable inference can be drawn to the contrary. The latter, when coupled with the positive denial by many witnesses of any conspiracy, as well as other inferences favorable only to the defendant's contentions, do not permit a finding based upon clear proof of an antitrust conspiracy.

Thus, while the execution of the 1950 National Bituminous Coal Wage Agreement between the U.M.W. and the northern operators, with the Union giving up its share-of-the-work concern for its members and the industry agreeing to substantial wage and fringe benefit increases, and each party expressing their concern for bringing stability to the coal industry, might lead to the inference that stability was being sought by means of an industry-union conspiracy to suppress or eliminate competition from the smaller operators, it is more reasonable to infer, however, that the agreement reached was the result of the most vigorous unilateral effort each party could muster. A more vigorous clash of interests or a more turbulent demonstration of what appeared to be arms' length collective bargaining has rarely been recorded in the history of labor-management relations than that which led up to the execution of the 1950 National Bituminous Coal Wage Agreement.

That the U.M.W. negotiated the 1950 National Bituminous Coal Wage Agreement with the spokesmen for the major coal producers in the nation and then has uniformly sought to impose the same agreement upon all the rest of the coal industry might reasonably lead to the inference that the U.M.W. had agreed with the major operators that it would impose the national agreement upon the rest of the coal industry. An equally reasonable inference

is that the Union was but following the pattern of industry-wide bargaining established since prior to the turn of the century in electing to negotiate the agreement with spokesmen of the major coal producers and was but following its historical policy of national uniformity of labor standards in seeking to impose the national agreement upon all of the industry. In the latter event, no inference of antitrust violation could arise, for, as stated in ***United Mine Workers v. Pennington, supra***, "Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it even though it may suspect that some of the employers cannot effectively compete if they are required to pay the wage scale demanded by the union." Wages as an element of price have been expressly removed by Congress from the competitive requirements of the antitrust laws. Labor is not required to become the fulcrum of price competition to avoid a Sherman Act charge, for, as held in *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 84 L. ed. 1311, 60 S. Ct. 982, an elimination of price competition based upon labor standards is not within the Sherman Act.

Moreover, to suppose that national collective bargaining can or will be conducted with other than major producers of an industry is a theory unrelated to the hard realities of a competitive economy. To suppose that major operators can or will be the guardians or protectors of the small and weak in the industry in such national bargaining is also largely a theory unlikely to relate to the realities of a competitive economy.

The problems posed to the small and medium sized enterprises by the practice of national collective bargaining would appear real and substantial. However, that their solution lies in the federal antitrust laws as now

enacted by Congress is doubtful.

The turbulent pattern of bargaining in the 1940's followed by the peaceful and harmonious pattern of bargaining between the U.M.W. and the B.C.O.A. in negotiating a series of amendments to the National Bituminous Coal Wage Agreement during the decade of the 1950's, which amendments provided for substantial increases in wages, welfare fund royalties and other benefits, might reasonably lead one to suspect that such harmony was achieved at the expense of a conspiracy directed at the smaller operators. Such peaceful and harmonious pattern of bargaining could as reasonably lead to the inference that the parties were acquiring maturity in the practice of collective bargaining and that collective bargaining was accomplishing its stated purpose of eliminating industrial warfare.

That the substantial increase in wages, welfare fund royalties and other benefits negotiated between the U.M.W. and the B.C.O.A. between 1950 and 1960, and in subsequent years, have provided a strong stimulous for mechanization of the coal mining industry, if in fact they have not made such mechanization essential to survival in the industry, cannot be doubted. One could possibly infer from this that it demonstrated a conspiratorial purpose between the U.M.W. and the large and favored coal operators to drive from the industry those whose mines were not as suited to mechanization or whose finances would not permit the heavy capital investment incident thereto. Again, a more reasonable inference would be that the wage and other benefits negotiated in the coal industry but followed the pattern set in the basic industries in the nation. Such increases in the coal industry were in line with or in some instances a little behind the scale in the steel, automotive and rubber industries during

the same period of time. As for mechanization, it is equally as reasonable to attribute it to the competition faced by coal from other energy sources as to charge it to increased labor costs. As shown by the charts in Appendix "A" to this opinion, a veritable revolution has occurred in the fuel and energy market since 1945, with coal losing many of its former markets and losing both relatively and absolutely to gas and petroleum fuels. Coal has been forced to mechanize to survive in the fuel market. Changes in production methods generated by the effects of competition between fuels and energy sources do not equate to a Sherman Act conspiracy.

That U.M.W.'s heavy investment in West Kentucky Coal Company and subsequent heavy losses on that investment presents a highly questionable series of transactions, does not here raise an inference of a Sherman Act conspiracy directed toward these plaintiffs, as the record does not support the plaintiffs' contention that West Kentucky Coal Company, nor other coal companies charged with complicity in the conspiracy, did in fact engage in the predatory pricing of coal upon the T.V.A. coal market. The downward pressure of the prices, or the "price squeeze", upon the T.V.A. market may be accounted for by the competitive force generated by public bidding as well as by other policies and practices of the T.V.A. in the purchase of coal and in the integrated manner of operating its widespread system of steam generating plants drawing on many coal fields.

Finally, U.M.W.'s activities in recent years in the Southeastern Tennessee coal field can be explained equally as well as being unilateral action in pursuing its own interests and policies as they can be explained by inferring that U.M.W. was acting in furtherance of a conspiracy. That it may have acted unwisely, unreason-

ably, mistakenly, or even wrongfully does not raise an inference of conspiracy that exceeds in weight or reason the inference that it acted unilaterally.

The evil days that have fallen upon the Southeastern Tennessee Coal field in recent years and the woes and misfortunes that have befallen the plaintiffs may be explained by many factors and conditions that are not demonstrative of a Sherman Act conspiracy. These include the pyramiding of leases, with the resulting increased royalty or rental payments, adverse geological conditions, to which reference has been made, and undercapitalization, with the resulting attempt to mine coal by hand or other antiquated methods in an era when not only coal but all fuel and energy is produced on a mechanical and mass production basis. In this latter regard the competition of other fuels has completely altered the coal market in Tennessee, as elsewhere, since 1950. The loss of the retail market by coal to electricity, oil and gas has been as evident in Tennessee as elsewhere, if not more so. The electric steam plant market which has replaced the retail market and other former coal markets in Tennessee is a low price, high volume market and consequently a more competitive market. Although the Southeastern Tennessee coal field appeared to have done well upon this market until about 1956, this can in part be explained by the rapid expansion of the T.V.A. coal market during this period, particularly at the Widow's Creek steam plant. However, by 1956 the Widow's Creek plant had the highest electric production cost of any plant in the T.V.A. system. Electric production was shifted to other plants with the result that coal consumption at Widow's Creek dropped from 2,366,000 tons in 1956 to 1,150,000 tons in 1959. This cutback was a significant contributing factor to the difficulties encountered by the

Southeastern Tennessee coal field during the corresponding period.

Did not the clear evidence rule apply, the Court might have reached a different conclusion upon certain issues. Likewise, did the prima facie rule, as announced by Justice Douglas in the *Pennington* case apply, a different view of the evidence would have been required. These matters have been previously dealt with by the Court.

Finally, it is apparent that a major part of the hope for the Southeastern Tennessee coal field lies in the direction of increased productivity. Whereas productivity in Tennessee was about in line with productivity throughout the nation for underground mines in 1950, since that time productivity of underground mines elsewhere has steadily risen while those in Tennessee have tended to remain constant or rise to a smaller degree. Whereas productivity in underground mines was at a level of approximately 5-1/2 to 5-3/4 tons per man-day in 1950, both in Tennessee mines and in underground mines throughout the nation, by 1960 national productivity had risen to 10.64 tons, whereas Tennessee mines advanced only to 6.70 tons. By 1963 the gap had further widened with national productivity rising to 12.78 tons but with Tennessee mines advancing only to 7.80 tons per man-day.

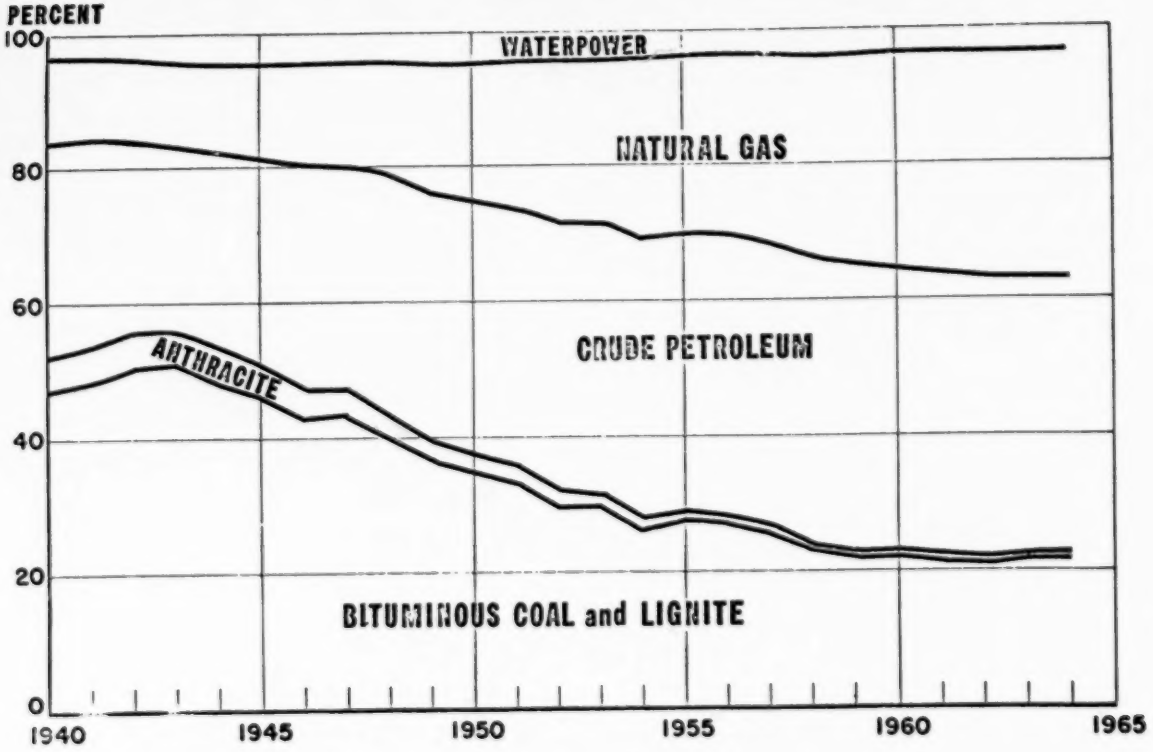
Increased productivity involves many factors of which machines are only a part. The human element, both on the side of management and on the side of labor, remains of prime importance. That coal can again be mined in the Southeastern Tennessee coal field and sold on the market with a fair profit to management and a fair wage to the miner would appear assured, given competent and progressive management, given under-

standing and effective union leadership, and given industrious and competent labor. How long before these conditions may prevail, no one can now tell.

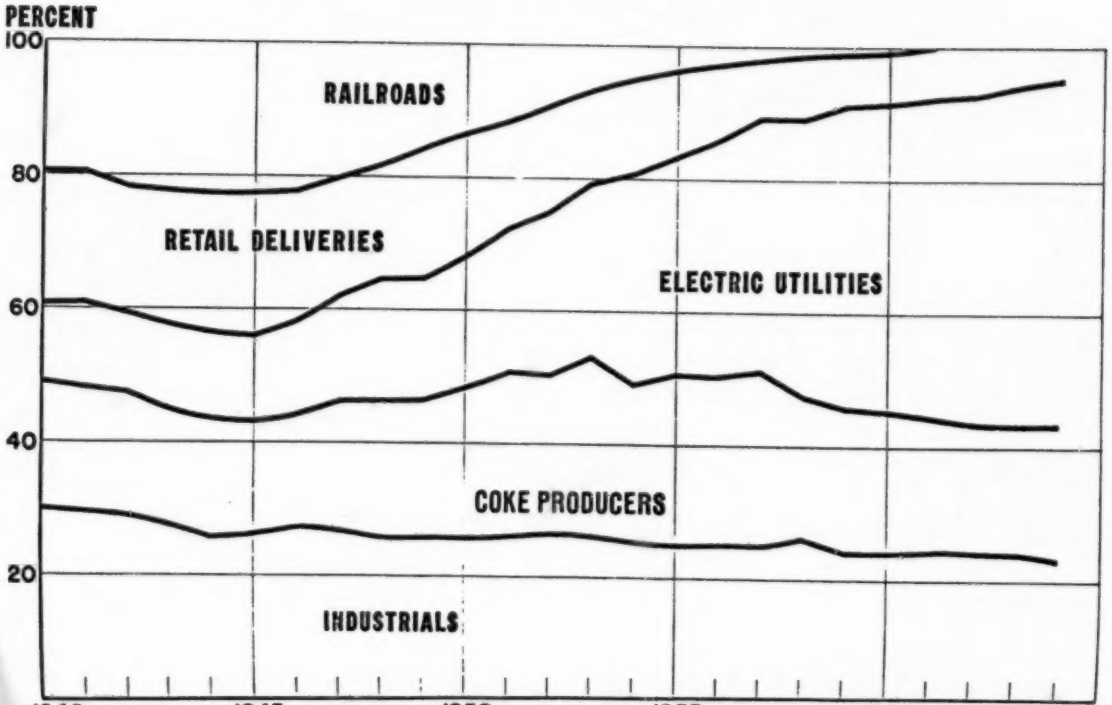
In view of the conclusions of the Court as set forth in this opinion, there is no need for the Court to rule upon the various motions of the defendant upon which action was reserved at the time of the trial. An order will enter in accordance with this opinion.

[Signature Omitted]

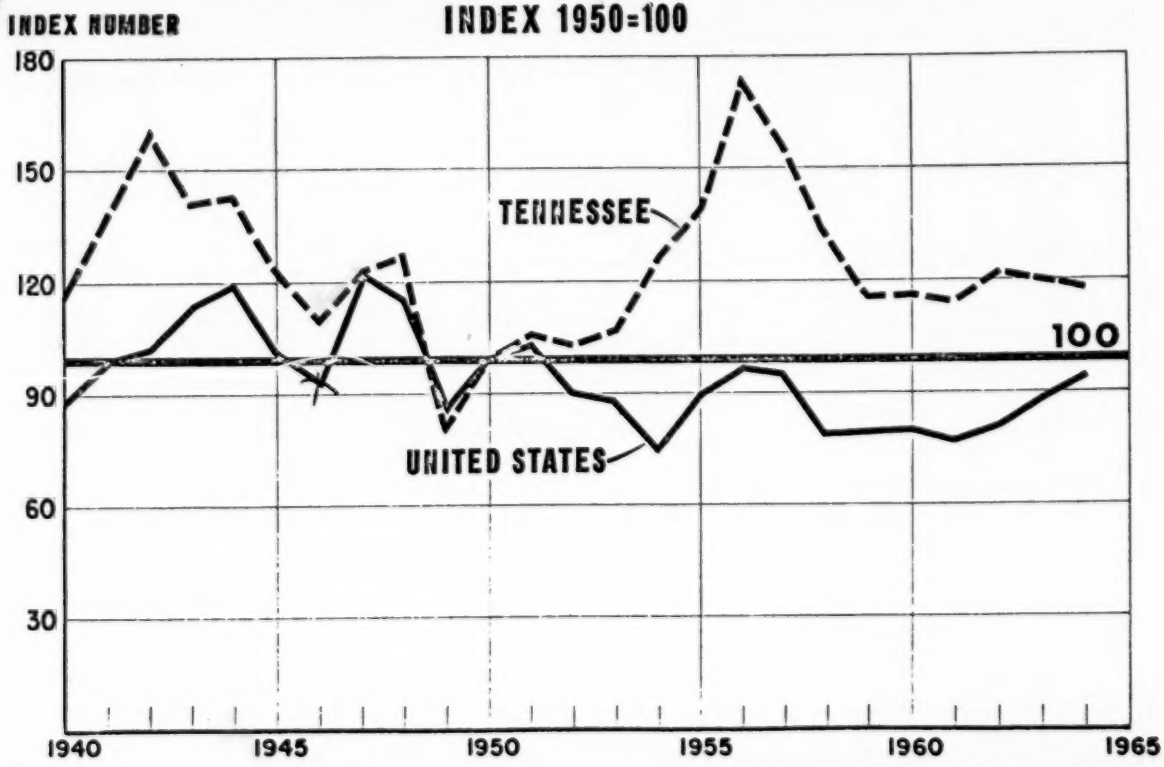
CHART 1. UNITED STATES CONSUMPTION OF ENERGY FUELS AND WATER POWER IN PERCENT OF B.T.U.'s, 1940-1964



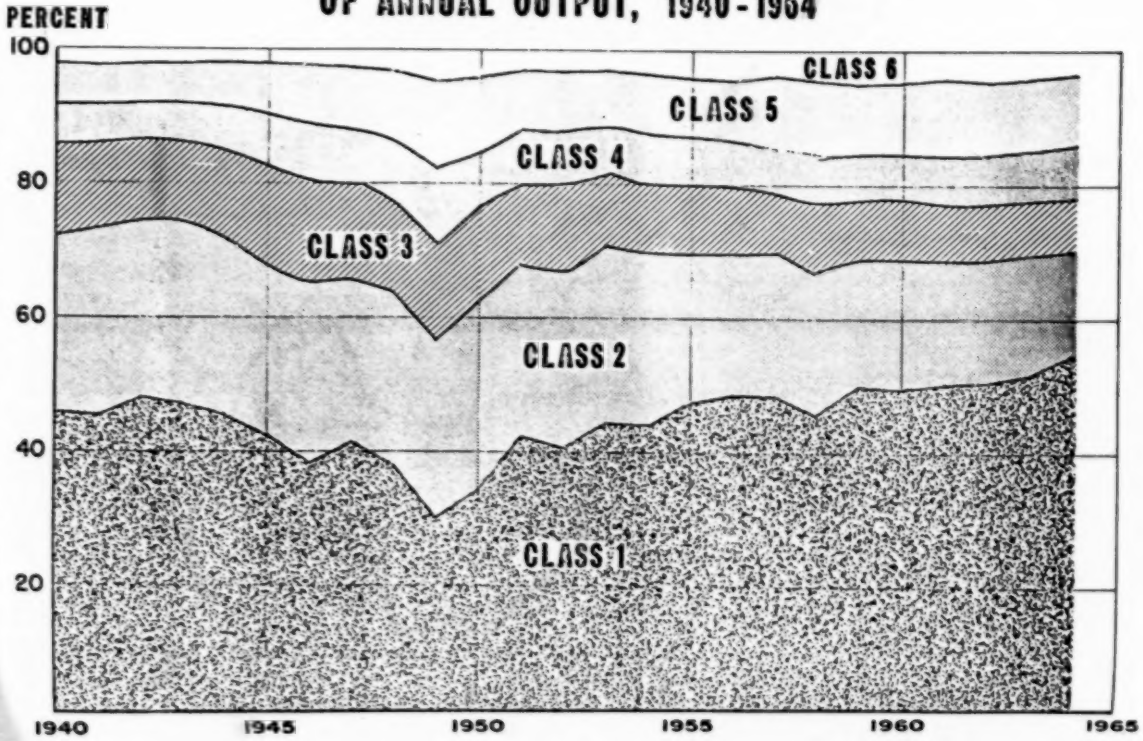
## CHART 2. UNITED STATES CONSUMPTION OF BITUMINOUS COAL BY CONSUMER CLASSES, IN PERCENT, 1940-1964



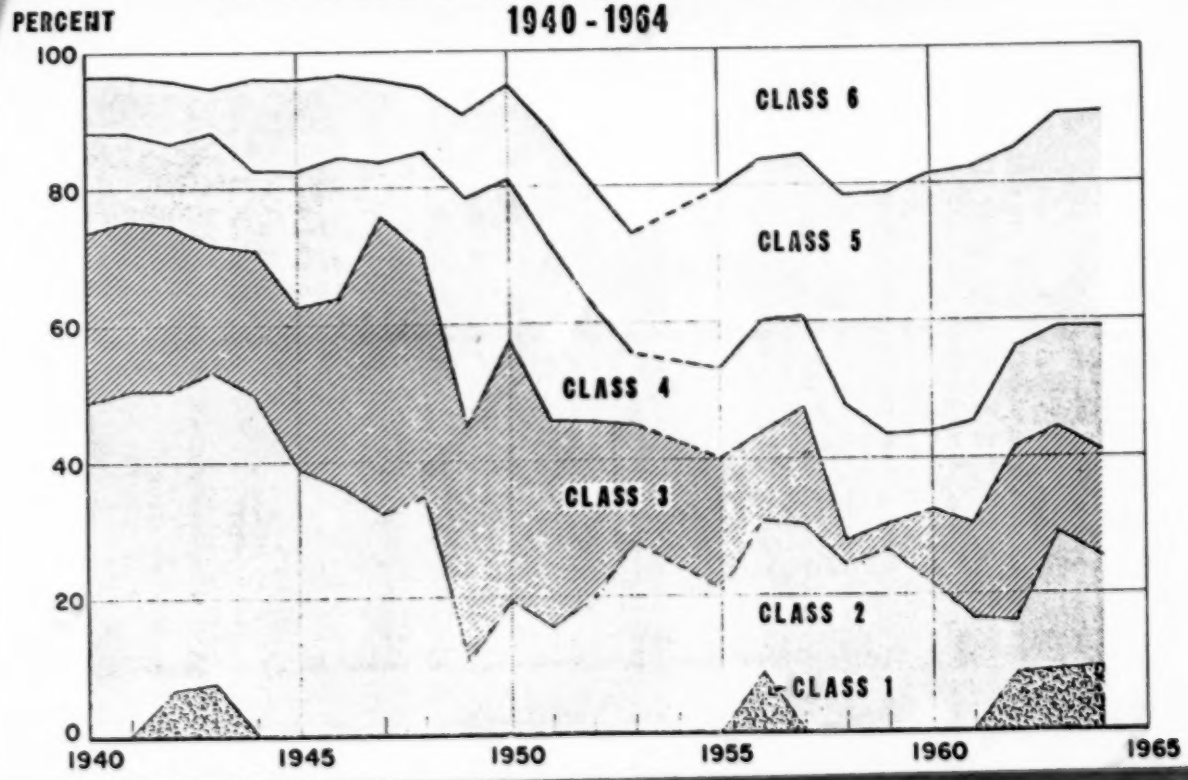
## CHART 3. TRENDS IN BITUMINOUS COAL PRODUCTION IN THE UNITED STATES AND TENNESSEE, 1940-1964



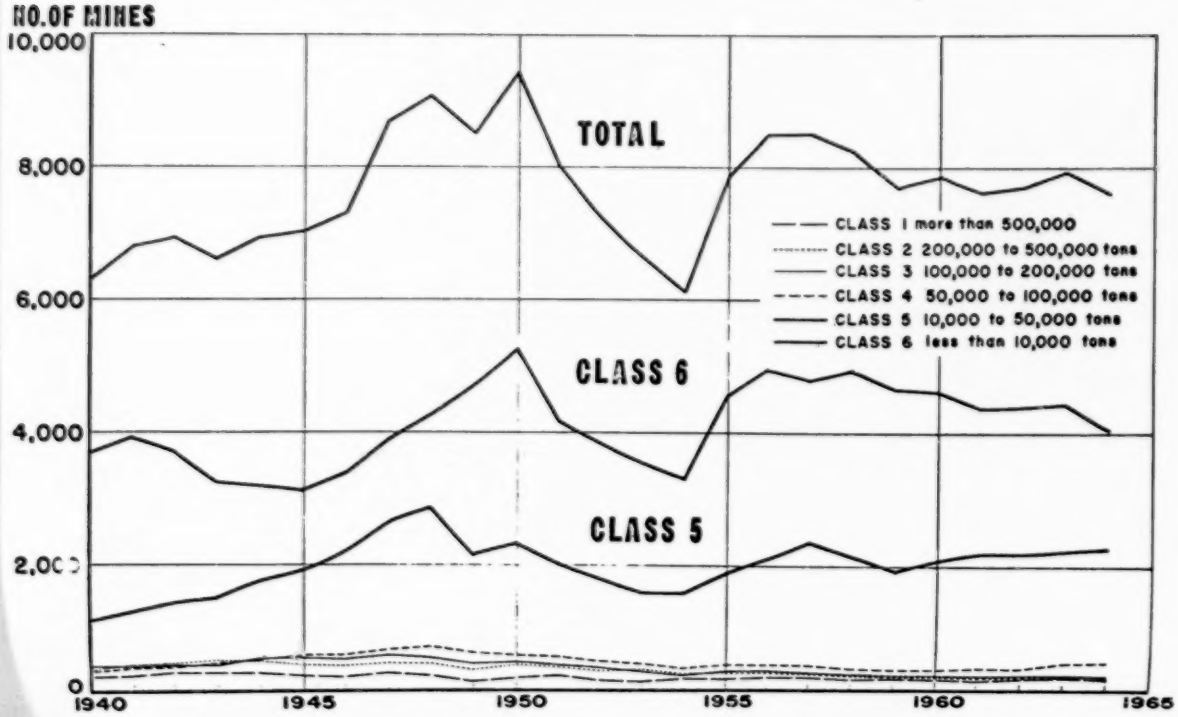
## CHART 4. UNITED STATES TOTAL PRODUCTION OF BITUMINOUS COAL IN PERCENT, BY SIZE OF ANNUAL OUTPUT, 1940-1964



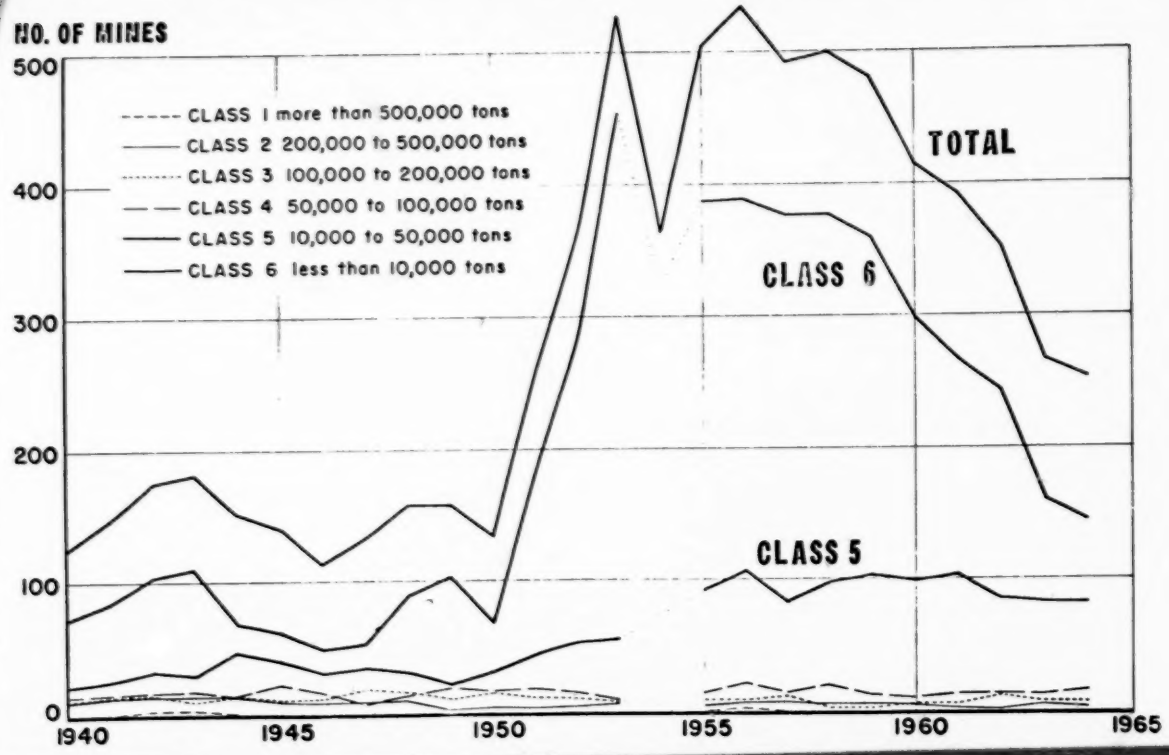
## CHART 5. TENNESSEE TOTAL PRODUCTION OF BITUMINOUS COAL IN PERCENT, BY SIZE OF ANNUAL OUTPUT, 1940 - 1964



# CHART 6. NUMBER OF BITUMINOUS COAL MINES, BY SIZE OF ANNUAL OUTPUT IN THE UNITED STATES, 1940-1964



## CHART 7. NUMBER OF BITUMINOUS COAL MINES, BY SIZE OF ANNUAL OUTPUT, IN TENNESSEE, 1940-1964



## CHART 8. UNITED STATES TOTAL PRODUCTION OF BITUMINOUS COAL BY METHOD OF MINING, IN PERCENT, 1940-1964

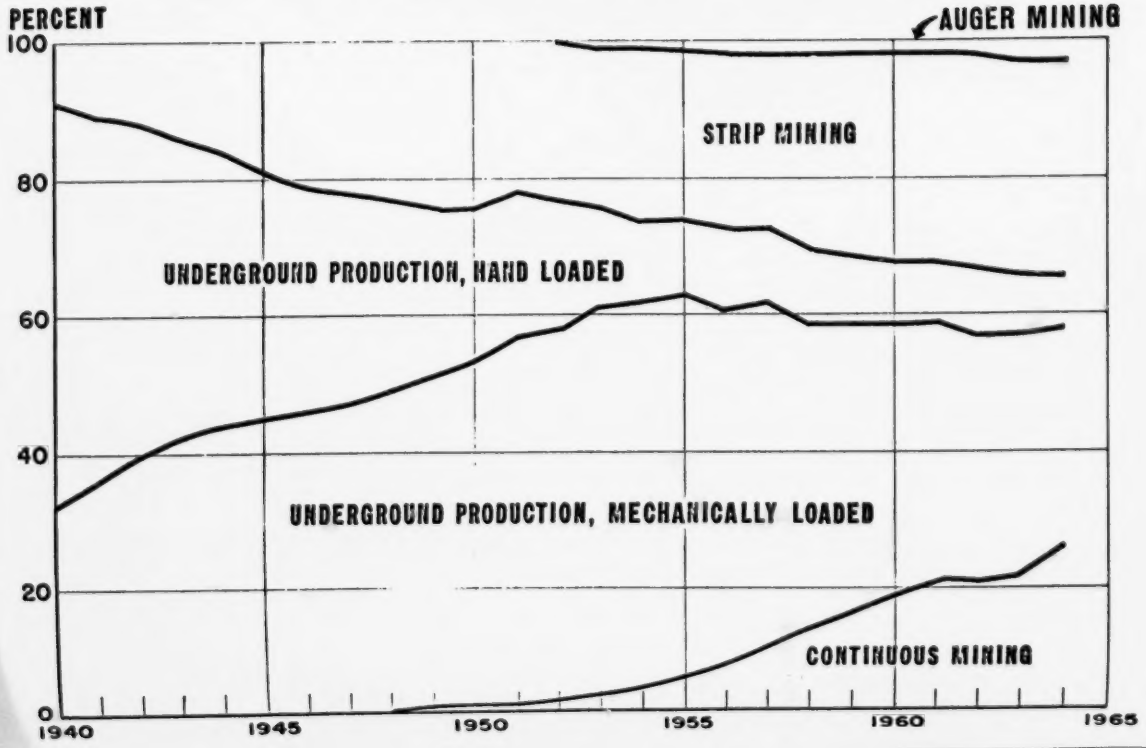
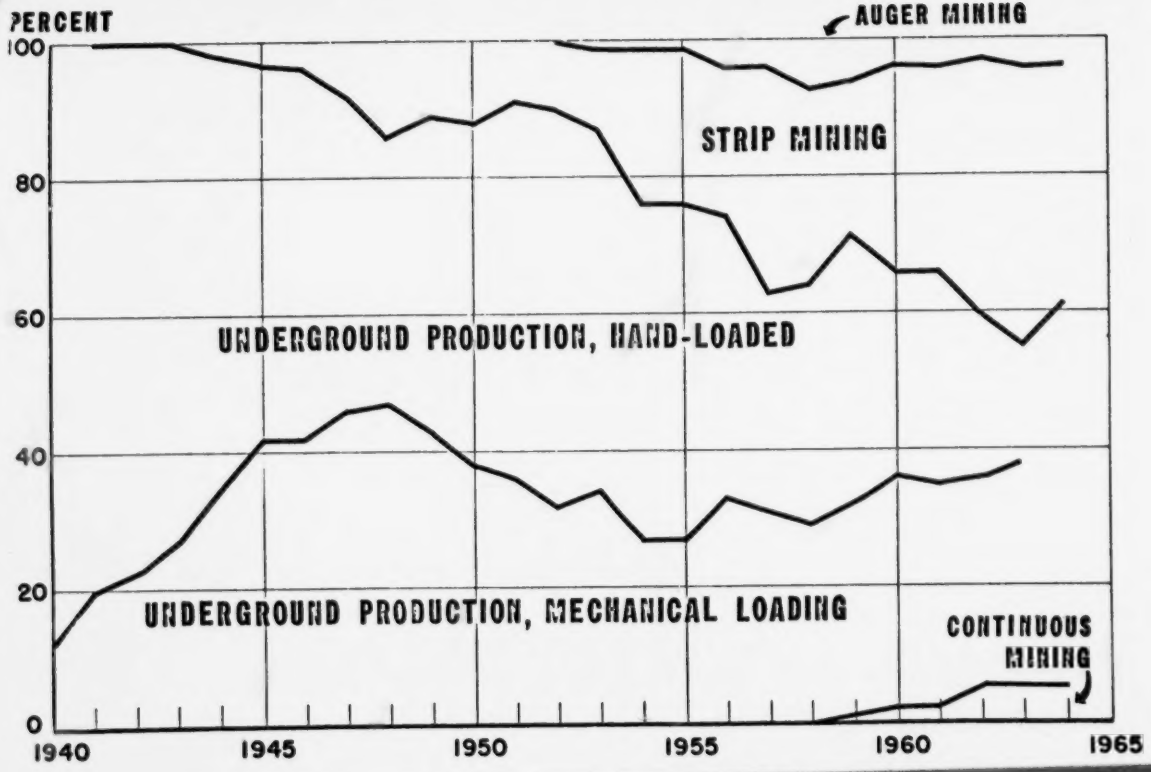


CHART 9. TENNESSEE TOTAL PRODUCTION OF BITUMINOUS COAL BY METHOD OF MINING, IN PERCENT, 1940-1964



[Caption Omitted]

[Civil Action No. 3667]

## FINAL JUDGMENT

(Filed March 9, 1967)

The above entitled action came on to be heard by the Court, sitting without a jury, and the Court having considered of the evidence and the briefs and arguments of counsel and for the reasons stated in its Opinion heretofore filed on March 4, 1967, and which is made a part of the record herein, setting forth findings of fact and conclusions of law, is of the opinion that plaintiffs, George Ramsey, Elmer Studer, Walter H. Studer and Dale F. Studer, d/b/a Walden Ridge Coal Company; Leon Nunley, d/b/a Leon Nunley Coal Company; Paul Gibbs, d/b/a Paul Gibbs Coal Company; Lois Hall Travis, Administratrix of the Estate of W. J. Travis, and J. H. Graham, d/b/a Ninth West Coal Company; A & R Coal Company, Inc.; W. T. Morrison and J. H. Graham, d/b/a M & G Coal Company, J. H. Graham Coal Company, Inc.; W. T. Morrison and Lois Hall Travis, Administratrix of the Estate of W. J. Travis, d/b/a M & T Coal Company; Stephenson Brothers Coal Company, Inc.; Edward Nunley, d/b/a Edward Nunley Coal Company; East Valley Coal Company, Inc.; Ellis Ward and Lon L. Varnell, d/b/a Tracy City Coal Company; Henry Willis Flynn, d/b/a Willis Flynn Coal Company; H. W. Flynn Coal Company, Inc.; Howard Higgins, d/b/a Howard Higgins Coal Company; Howard Higgins Coal Company, Inc.; Marshall Meeks, d/b/a Marshall Meeks Coal Company, and each of them, have failed to establish their alleged causes of action against the United Mine Workers of America under the Sherman Act and Clayton Acts.

IT IS ACCORDINGLY

Final Judgment (No. 3667)

ORDERED, ADJUDGED AND DECREED that the causes of action alleged and asserted herein under the Sherman Act and Clayton Act by plaintiffs herein, and each of them, be and hereby are dismissed with prejudice, and each of said parties shall take nothing by their action.

It is further ordered, adjudged and decreed that the costs of said action are taxed against said plaintiffs, and each of them, and in favor of defendant, United Mine Workers of America.

ENTER:

[Signature Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## FINAL JUDGMENT

(Filed March 9, 1967)

The above entitled action came on to be heard by the Court, sitting without a jury, and the Court having considered of the evidence and the briefs and arguments of counsel and for the reasons stated in its Opinion heretofore filed on March 4, 1967, and which is made a part of the record herein, setting forth findings of fact and conclusions of law, is of the opinion that plaintiff, Tennessee Products & Chemical Corporation, has failed to establish its alleged causes of action against the United Mine Worker of America under the Sherman Act and Clayton Act.

IT IS ACCORDINGLY

ORDERED, ADJUDGED AND DECREED that the causes of action alleged and asserted herein under the Sherman Act and Clayton Act by plaintiff herein be and hereby are dismissed with prejudice, and said party shall take nothin by its action.

It is further ordered, adjudged and decreed that the costs of said action are taxed against said plaintiff and in favor of defendant, United Mine Workers of America.

ENTER:

[Signature Omitted]

[Caption Omitted]

[Civil Actions Nos. 3667 and 4189]

## ORDER

(Filed March 23, 1967)

The captioned cases having been considered and decided by the Court on the basis of the same trial record, and in order to obviate expensive duplication of records, it is ordered that, in the event of appeal from the final judgments in both of these cases, there shall be transmitted to the Court of Appeals a single trial record which shall serve as the trial record on appeals in both cases, the trial transcript being numbered serially with two numbers, one for each of the two cases, and the exhibits bearing the stamp of filing in the trial of Civil Action No. 3667 also constituting exhibits in Civil Action No. 4189.

Enter:

[Signature Omitted]

[Caption Omitted]

[Civil Action No. 3667]

## NOTICE OF APPEAL

(Filed March 23, 1967)

Notice is hereby given that George Ramsey; Leon Nunley, d/b/a Leon Nunley Coal Company; Paul Gibbs; d/b/a Paul Gibbs Coal Company; Lois Hall Travis, Administratrix of the Estate of W. J. Travis; and J. H. Graham, d/b/a Ninth West Coal Company; A & R Coal Company, Inc.; W. T. Morrison and J. H. Graham, d/b/a M & G Coal Company; J. H. Graham Coal Company, Inc.; W. T. Morrison and Lois Hall Travis, Administratrix of the Estate of W. J. Travis, d/b/a M & T Coal Company; Stephenson Brothers Coal Company, Inc.; Edward Nunley, d/b/a Nunley Coal Company; East Valley Coal Company, Inc.; Ellis Ward and Lon L. Varnell, d/b/a Tracy City Coal Company; Henry Willis Flynn d/b/a Willis Flynn Coal Company; H. W. Flynn Coal Company, Inc.; Howard Higgins, d/b/a Howard Higgins Coal Company; Howard Higgins Coal Company, Inc., and Marshall Meeks hereby appeal to the United States Court of Appeals for the Sixth Circuit from the final judgment entered herein on March 9, 1967.

[Signature Omitted]

[Caption Omitted]

[Civil Action No. 4189]

## NOTICE OF APPEAL

(Filed March 23, 1967)

Notice is hereby given that Tennessee Products & Chemical Corporation hereby appeals from the final judgment entered herein on March 9, 1967, to the Court of Appeals for the Sixth Circuit.

[Signature Omitted]

# EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[Caption Omitted]

(Filed November 26, 1965)

* * *

[2] Tuesday, September 21, 1965
Chattanooga, Tennessee

BE IT REMEMBERED, the above-entitled cause came on for hearing on this date before the Honorable Frank W. Wilson, Judge of said Court, without the intervention of the jury, when the following proceedings were had and evidence introduced, to-wit:

THE COURT: All right, Mr. Dale. Will you call the case that is for trial this morning?

CLERK ROBERT DALE: For non-jury civil trial, Case No. 3667, George Ramsey and others vs. United Mine Workers of America.

* * *

[1111] **ALBERT PASS**

(Thereupon, the questions and answers were read by Mr. Rowntree as follows:)

[1112] DIRECT EXAMINATION

"Q What is your name?
"A Albert Pass.
"Q Where do you live?
"A Middlesboro, Kentucky.

"Q What is your position with the United Mine Workers?

A Secretary-treasurer, District 19, United Mine Workers of America.

"Q How long have you held that position?

"A Since February 1952, February or March.

"Q What was your position before that time?

"A Before that time I was bookkeeper for the secretary and treasurer of District 19 and assigned to other work by the president of District 19.

"Q When did you first go with District 19?

"A In January 1941.

"Q How old are you, Mr. Pass?

"A Forty-five.

"Q Who had been the presidents of the District since 1950, District 19?

"A Ray Thomason and Abe Vales.

"Q Was Abe Vales before Thomason?

"A No, excuse me, the first two are [1113] correct.

Charley Hicks, acting president, and J. W. Ridings.

"Q And Mr. Turnblazer?

"A William J. Turnblazer.

"Q Could you give us roughly what years those gentlemen served as president of District 19?

"A As I recall, Mr. Vales served from 1945 until August 1951; Mr. Hicks served from August, 1951, I believe, until January of 1952; Mr. Thomason served from January 1952 until, I believe, July 1955; Mr. Ridings served from July 1955, I believe, until 1963, I think.

"Q You can ask the president if you want to.

"A And from December 1962 William J. Turnblazer has held that office.

"Q Since 1950 have these presidents of District 19 been elected by the membership of the District?

"A No.

"Q How did they take their office?

"A They were appointed by the president of the International Union, United Mine Workers of America, and approved by the International Executive Board of the United Mine Workers of America.

"Q Were you elected as secretary-treasurer or were you appointed?

"A I was appointed.

"Q By the International president?

[1114] "A In the same manner.

"Q Who pays the president of the District and the secretary-treasurer of the District?

"A The International Union.

"Q Do you have a vice-president of the District?

"A No, sir, we do not.

"Q Have you ever had one?

"A Yes, we have.

"Q Since 1950 who has held the position of vice-president?

"A Charley Hicks and Manley Edwards.

"Q When did Manley Edwards serve as vice-president?

"A Roughly I would say he served from 1957 up until probably 1963, that is my recollection. I could be off a year or so.

"Q Was he elected or was he also appointed?

"A He was appointed.

"Q In the same manner?

"A In the same manner.

"Q Are all three of those officers paid by the International Union?

"A Yes, sir.

"Q Is District 19 a so-called provisional district?

"A Yes, sir, it is.

"Q Is that distinguished from an autonomous district?

[1115] "A Yes, sir.

"Q Has it been a provisional district throughout the period since 1950?

"A Yes, sir.

"Q What were your responsibilities as secretary-treasurer?

"A To keep a record of the finances and the records of District 19 office, and any other duties that may be assigned me by the president of District 19.

"Q Does the District president appoint organizers or representatives of the District to work out in the field?

"A Yes, he appoints the District representatives.

"Q And does the District pay those representatives?

"A Yes, they do.

"Q What responsibilities do the organizers have?

"A We do not have anyone that is designated solely as organizers.

"Q What do you call them, representatives?

"A We call them representatives, fieldworkers.

"Q And what are their responsibilities?

"A Their responsibilities are to service the membership of the United Mine Workers under the constitution and under the contract, to organize the unorganized, and other matters that would be helpful to the members of the union.

[1116] "Q Are they under the direction of the

president of the District?

"A Yes, they are.

"Q Can you name what organizers have been placed in the Southeastern Tennessee coalfield by the District since 1950 with responsibilities as representatives?

"A The fieldworkers that have been placed in Southern Tennessee since 1950 are George Gilbert, Matt Bunch, Hugh Rankin, Jack Deaton, Howard Madewell, Ernest Stults, Bill Prater, that's all I can recall at the moment.

"Q Do you recall Allen Condra?

"A Allen Condra was not a representative of District 19.

"Q Was he a member of the union?

"A Yes, he was a member of the union.

"Q Was he in a local union position?

"A He was an International representative.

"Q Did he have an office in District 19 at that time?

"A No, sir, he did not.

"Q Was he representing District 19 as International representative?

"A He was assigned to District 19 to work at the direction of the president of District 19.

"MR. COMBS: Pardon the interruption, [1117] Mr. Rowntree, but I think the record would be a little clearer—I don't think Mr. Pass is testifying that these fieldworkers or representatives were all there at the same time, they were there at different periods of time since 1950 up until that time.

"Q Would it be possible for you to recall roughly the years those representatives were in the field in Southeastern Tennessee?

"A Roughly I would believe, without checking the records, that Matt Bunch and Hugh Rankin were there until sometime in 1952; George Gilbert was there from 1952 until, I believe, 1960; Jack Deaton and Bill Prater were only there at certain short periods of time since 1960; Ernest Stults has been there shortly since 1960; Howard Madewell was regularly assigned there and he is still there since 1960 or thereabouts; Allen Condra was there from about the middle of September, 1955, I think, until about November 1, 1955.

"Q Did you give me George Gilbert?

"A Yes, I believe I did first.

"Q Did these representatives of the District in the Southeastern Tennessee field have the responsibility for obtaining new members to the Union?

"A Yes, they did.

"Q When a new member was taken into the union, was he placed in a local union or assigned to a local union?

[1118] "A Yes.

"Q Was there initiation dues required to be paid by him?

"A If he was not a member at the time that he became subject to the jurisdiction of a local union, he paid an initiation fee; if he was already a member, he merely transferred his membership from the local union that he belonged to to the local union he should be in.

"Q That was on a transfer card of some kind?

"A A transfer card.

"Q What was the amount of the initiation dues?

"A Fifty dollars.

"Q What amount of that—how was that distributed?

"A Fifty-dollar initiation fee was paid by the member at the rate of 10 dollars per month for a period of five months. The local union received $25 and the International Union received the other $25, making a total of $50.

"Q Did the men pay monthly dues?

"A Yes, they did.

"Q How much was that?

"A They paid previous to 1952, if I recall, it was $4 per month. In 1952 to date until October it was $4.25 per month. After the convention in October of 1964 the dues is $5.25 per month.

"Q Can you tell us how that was distributed?

[1119] "A The International Union receives $2.00, the local union receives $1.25; and the District receives $1.25.

"Q That was when the dues were $4.50?

"A Let me see—no, I have made a mistake here—that is when it was $4.25.

"Q When it was $4.25 the local received $1.25?

"A Yes.

"Q The District received $1.00?

"A $1.00, right.

"Q And the International received $2.00?

"A That is correct.

"Q And the other amounts of dues were distributed in like manner between the organizations?

"A No, in the last increase in dues, the International Union didn't receive any increase, the local and the District received the increase.

"Q All the way through, has the International since 1950 received $2.00 of the dues?

"A Yes.

"MR. COMBS: So the record will be clear, I

think the witness neglected one fieldworker, if you want him in there—wasn't C. E. Ross in there?

"THE WITNESS: Yes, I am sorry. C. E. Ross was there for a short period of time.

"Q Do you remember approximately when?

[1120] "A It was shortly after 1959, as I recall. I don't recall the period of time he was there, but he was there.

"Q From whom did the District receive the forms of the amendments to the National Bituminous Coal Wage Agreement when a new amendment came out?

"A We received them from the International Union of United Mine Workers.

"Q What was the responsibility of the organizers with respect to these amendments to the National Bituminous Coal Wage Agreements?

"A To contact the operators.

"Q And do what?

"A About signing the contract.

"Q What authority did the field representatives of District 19 have to change the language in the form of the amendment to the National Bituminous Coal Wage Agreement?

"A They had no authority.

"Q What authority did the local unions have to change the language in the amendments to the National Bituminous Coal Wage Agreement?

"A No authority.

"Q Was there any negotiation permissible with respect to the language of the amendments to the National Bituminous Coal Wage Agreement between the operator and the representatives of the District or the local unions?

[1121] "A As far as negotiation is concerned,

we have always been willing to negotiate, but there was no authority vested in any field representative or any local union to change the provisions of the contract that had been negotiated and signed by the local operators in the industry.

"Q In Washington?

"A Wherever it might be.

"Q Since 1950 has it not always been signed in Washington?

"A My recollection is that the contracts have been executed since 1950 in Washington.

"Q Were the initial negotiations always with the Bituminous Coal Operators Association, or were you present?

"A I have been present, and I wouldn't know, not being acquainted with all the people in the coal industry, I couldn't state who all was there to start with.

"Q In the Southeastern Tennessee field, if an operator did not sign the form of the amendment to the National Bituminous Coal Wage Agreement, would the members of the union who were his employees work before he signed it?

"A In some instances they have and in some instances they have not.

"Q Can you give us an instance before 1962 when they did not—when they did work without a signing of the contract?

[1122] "A Yes.

"Q When was this?

"A Before 1962?

"Q Yes, sir.

"A I believe that it occurred on or after October 1961, in which the company cancelled the contract

with the United Mine Workers of America, Tennessee Consolidated Coal Company. Probably that date was 1960—no, I am mistaken on the date, I believe the date was 1962, and it affected the Allen and Garcia Coal Company, and by agreement with the District and the coal company, they did continue to operate with an understanding that the provisions of the contract remain in full force and effect for some two or three months.

"Q Was this when the Sewanee Coal Operators Association was negotiating with the District representatives?

"A As I recall, it affected the Grundy Mining Company and the operators on the Tennessee Consolidated Coal Company property, as I recall at this time.

"Q This was when Allen and Garcia cancelled the contract in August of 1962 with a 60-day waiting period and were not negotiations going on later in that period?

"A Yes, they were.

"Q Do you recall any other instances prior to 1962 where the union members, employees of the operator, worked without the operator signing a contract?

[1123] "A I can't recall particular names of coal companies, but I can recall generally that the coal operator would want to review the contract, and stated that they would let the proper people know, which would be the District representatives, what they were going to do about it, and the representatives asked the men to continue work until they found out what they were going to do, and they signed the contract in those instances and continued operating.

"Q I will ask you this question: Do you recall testimony in the trustees' case against operators of truck mines on Tennessee Consolidated property, tried

in the District Court in Chattanooga about early August, 1962, being asked on cross examination:

"'Wasn't it generally considered that before any mines could go back to work after a new amendment came after the International agreement, that the operator had to sign the International agreement in the Whitewell-Palmer area?

"'Answer. Of course, the members didn't work when they wanted to. The United Mine Workers of America, they couldn't operate the mines without the coal miners. If they didn't work without it being signed, of course, if they wanted to work they would sign it and they did.

"'Question. But it was generally accepted that after a new amendment to the International agreement came out, no mine could operate after the effective date of that agreement until the operator of
[1124] that mine had signed the agreement?

"'Our members refused to work, that's right.'

"Are those answers correct?

"A I would say generally it is generally understood that if they don't execute the amendment, not generally understood but a fact, if they don't execute the amendment the members of their union and those mines there or anywhere else will not work.

"Q Did the District officers of District 19 after 1950 ever have discussions among themselves or with the field representatives that the Southeastern Tennessee mines, particularly the truck mines, could not comply with the National Bituminous Coal Wage Agreement as amended?

"A No, sir; no, sir.

"Q Did you not have any discussions even with respect to the hand-loading truck mines in the Southeastern Tennessee field?

"A We've had a lot of discussions on hand-loading mines and big mines, too, in the Tennessee field.

"Q About their inability to comply with the national contract?

"A No, sir.

"Q You have never had any discussions along that line?

"A No, sir.

[1125] "Q Did you, as secretary and treasurer of District 19 since 1950, ever hear about side deals between the operators of truck mines in the Southeastern Tennessee field and representatives of local unions in that field, or with district representatives about a scale of wages, or about paying what you can on the Welfare Fund?

"A No, sir.

"Q You never heard about any such deals?

"A No, sir. The only thing I know about in that respect is the mines that were on a hand-loading basis where the members of their union were not paid by the hour, and they would agree upon a rate by the car for their wages.

"Q And this would be an agreement which would be worked out locally?

"A Yes.

"Q Did you hear about any instances like that?

"A I have heard of several, yes, sir.

"Q Were any instructions issued to the organizers and District representatives in the field about what to do about those situations when they were heard about?

"A I never did issue any—you are referring to the rate per car?

"Q Yes.

"A I never did issue any.

"Q Did you hear the president issue any such orders?

[1126] "A No, I never have.

"Q Did you discuss those with the president of the District?

"A I never did.

"Q Did he know, to your knowledge, that they existed?

"A I believe he did.

"Q Was any report made by you or by the president, to your knowledge, of such deals to the International Union?

"A There have never been any deals made, to my opinion. I am not testifying there have been any deals made.

"Q What kind of understanding are you talking about?

"A I am talking about compensation or wages to be paid to miners in the hand-loading mines where they have no scales to weigh the coal, and that since they don't have any scales to properly weigh the coal, to pay them so much per ton, that they agreed upon a rate to be paid by the car according to what they could estimate a car would weigh. That is what I am testifying.

"Q Was any report made to International Union concerning such rates, rate agreements?

"A To my knowledge there never has been.

"Q Did you check to determine whether or not these rates of wages by the car complied with the International contract?

[1127] "A Yes.

"Q What did you find out with respect to that?

"A I found it did.

"Q Is there a provision in the agreement with respect to those kind of operations?

"A Yes.

"Q Is this a copy of the entire agreement that would cover the wage scale in the Southeastern Tennessee field?"

I handed him a brown envelope.

"A Up until and including the amendment effective October 1, 1956.

"Q And there have been two since then, is that correct?

"A Yes.

"Q 1958 and 1964?

"A Yes.

"Q Will you point out where that agreement touches upon or covers the hand-loading-by-car scale?

"A Let's see if I can find it, it will take just a minute to find it.

"Q While you are looking there, let me introduce this as Exhibit No. 1, being the wage agreement between Southern Tennessee Coal Producers' Association and District 19, United Mine Workers of America, containing the Southern Tennessee District Agreement,

[1128] April 1, 1941; Southern Wage Agreement of July 5, 1941; Six—Supplemental Agreement executed February 11, 1943; National Bituminous Coal Wage Agreement, April 11, 1945; National Bituminous Coal Wage Agreement of July 7, 1947; July 1, 1958; and March 5, 1950; and the amendments

to that agreement of 1951, 1952, 1955, and 1956."

* * *

[1132] MR. ROWNTREE: The last question on Page 18 was, "Will you point out where that agreement," being Exhibit 11——

THE COURT: (Interposing) One hundred seventeen.

MR. ROWNTREE: "touches upon or covers the hand loading by car scale?"

We are on Page 19, the answer begins at Line 14.

(Thereupon, Mr. Rowntree read the questions and Mr. Cameron the answers of the deposition of Albert Pass as follows:)

"A Section 40, entitled 'Checkweighmen and Check-measurers, which reads as follows:

'The Mine Workers shall have the right to a check-weighman, of their own choosing, to inspect the weighing of coal; provided, that in any case where on account of physical conditions and mutual agreement, wages are based on measure or other method than [1133] on actual weights, the Mine Workers shall have the right to check the accuracy and fairness of such method, by a representative of their own choosing.'

"MR. COMBS: In order to have the record straight, may I refer the witness to Page 7 of Exhibit 1, Section 11, and see if that has any application.

"A On Page 7, Section 11, entitled 'Weighing of Coal', I read as follows:

'Where scales are not now installed, the operator will make every possible effort to install scales at the earliest date.'

"Q Are those the provisions of the contract that you say these agreements complied with?

"A Mutually agreed upon, yes, sir.

"Q Do not these provisions require a measurement of coal?

"A Yes, sir.

"Q And did you not testify that there were no scales?

"A There are no scales.

"Q Is it not true that the wage rates contained in that Exhibit 1 were hand-loading operations based upon quantity produced, or based upon a per ton rate?

"A Yes.

[1134] "Q And are not the rates specified in the agreement?

"A Yes.

"Q Were these rates that you heard about being fixed by local agreements in compliance with the rates specified in Exhibit 1?

"A I believe them to be, yes; I believe them to be in compliance.

"Q Did you hear about any scales being negotiated down there on a hand-loading operation based upon a rate below the scale provided in Exhibit 1?

"A No, I have not.

"Q You have never heard about any such agreements or deals?

"A No, I have not.

"Q So if any such deals below the scale specified in Exhibit 1 actually existed, those scales or agreements would have been made without District approval, is that correct?

"A The District absolutely has not, does not, and

will not condone any deals made by any coal operator on his contract."

MR. COMBS: That is "made with."

MR. CAMERON: I am sorry. "made with any coal operator on his contract.

"Q Different from the contract?

[1135] "A Different from the contract.

"Q If any such agreements or scales were negotiated locally without District approval, did you receive any grievances based upon such scales from the local union members in the Southeastern Tennessee field?

"A I have not.

"Q Do you know of any grievances being filed within the District about that?

"A No, sir, I don't.

"Q There had been stoppages of work, had there not, from time to time about non-compliance with the national contract in the Southeastern Tennessee field?

"A Yes, sir, there have.

"Q Do you recall that one of these existed in July and August of 1955 over vacation pay?

"A I don't know if it existed in July, but I believe it started about that time over the vacation pay; yes, I do.

"Q Did you go down to the Southeastern Tennessee field in connection with that matter?

"A Yes, I was assigned to go there.

"Q Did you have a meeting with the operators or other union representatives in August, 1955, at the Whitwell Commissary?

"A Either August or the first of September; yes, we did.

[1136] "Q Did you have more than one meeting that month?

"A As I recall at this time, I believe we only had the one meeting, as I recall at this time.

"Q In August?

"A August or first part of September, whichever it was.

"Q Could you tell us who was present at that meeting?

"A Representing the coal companies, as I recall, Tennessee Consolidated Coal Company representatives were Paul Callis, Everett Roberts, I mean Ewing Hampton. That is all I can recall of them. Tennessee Products and Chemical Corporation representatives were W. J. Travis, Herschel Daffron, Jim Miller. That is all I can recall of them, and some few operators that were leasing mines from both of those large coal companies.

"Q Do you recall who was there from the District or local unions?

"A George Gilbert from the local, and myself representing the District. I am not sure whether Allen Condra was there or not, but I believe he was there representing the District.

"Q Do you know whether or not Mr. Manley Edwards was there?

"A No, sir, he was not there.

"Q Did you raise the question about the

[1137] non-payment of vacation pay?

"A Yes, I did."

"Q Were the truck mines down at that time because of this vacation question?

"A Yes.

"Q Did the operators say that they didn't have the money or not going to pay it?

"A The question was asked by me what they were going to do about paying the vacation pay, and Mr. Callis and Mr. Travis in turn advised me that they were not getting enough for their coal from TVA to pay these small operators so they could pay vacation pay, and I can't remember the sequence but we were advised by both the small operators and the two large companies that I have stated that they could not pay it and were not going to pay it.

"Q How much would this amount to per man?

"A I can't recall, ever what the contract called for at that time.

"Q Was it $140 a man, do you recall?

"A I don't know whether it was $140 or $180, I can't recall.

"Q So, did the mines resume work as a result of that meeting?

"A No, they did not.

"Q Did a new contract come out for [1138] signature under the National Bituminous Coal Wage Agreement in August of 1955?

"A I believe that was effective September 1, 1955.

"Q Did you go back to the Southeastern Tennessee field in October, 1955?

"A Yes, I was in and out of there quite a bit.

"Q Were you present there at George Gilbert's house in Jasper when some operators came up to talk to you all?

"A I remember that very vividly; yes, I was there.

"Q Were the mines down at that time?

"A Yes, they were.

"Q What did these operators want?

"A At first I didn't know what they wanted."

THE COURT: Let me see. When was this you are talking about?

MR. ROWNTREE: This is October, 1955.

THE COURT: All right.

"A There was about 35, I guess, or 40 cars, and they drove up and got out of their cars and come up to George Gilbert's yard and George said, in fact, 'We had better go out and see what they want.' So we went out and we said, 'What do you want?'

"And they said, 'We want to know what is going on.'

"I said, 'Well, what do you mean, what is going on?'

[1139] "And they said, 'Why the mines are not working.'

"Of course, I did advise them at the reason they wern't working was because they hadn't paid the vacation pay, and that we had learned, and also the members of the local unions had learned, that the coal companies that had been working, which was them, was not paying 40 cents a ton on all of the coal they produced for use or sale to the Welfare Fund while they were working. I suggested to them that we just have a little talk and see what could be done about it, and we all sat down on Mr. Gilbert's lawn and began to discuss it.

"MR. COMBS: I don't want to interrupt counsel or the witness, but it hasn't been demonstrated or anything about who these operators were.

"MR. ROWNTREE: That is what I am going to ask.

"MR. COMBS: We object to it because this is strictly heresay up to date, even if it is a witness on

the part of the union. It is your witness but I mean it is heresay so far.

"Q Who were these operators, were they Tennessee Consolidated officers or Tennessee Products officers or were they truck mine operators?

"A They were the coal operators leasing mines on the properties of Tennessee Consolidated Company and Tennessee Products and Chemical Corporation.

[1140] "Q Did you give them some suggestions about what to do?

"A Yes.

"Q What did you tell them?

"A I suggested to them that inasmuch as we had considerable trouble on this vacation pay for these members of our union, I thought it would be a good idea that they pay the vacation pay by the month instead of waiting until the last pay day occurring in the month of June of each year, at which time they would advise our members that they didn't have the money to pay it with; that they should execute an authorization giving the two large coal companies the authority to withhold the 40 cents per ton on all coal they produced for use or sale and forward it to the Welfare Fund, and they agreed.

"Then I typed up two or three, maybe two or three, I don't know, less than four, I'd say, authorizations that appeared to me would be in order, and some of them signed them.

"Then it began to grow late, so finally they said, 'Well, we've got to see the two big companies before we can do anything anyway, and suppose we see if we can meet with them and see what they say.'

"I said, 'That's all right with me.'

"So I believe I was the man that called, or
[1141] maybe one of them called, I don't recall who got in touch with the two large companies, Tennessee Consolidated Coal Company and Tennessee Products and Chemical Corporation, and talked with them. Either that night or the next morning we got together on a meeting to discuss it. We had the meeting just a day or two after this afternoon I just testified about at the offices of Tennessee Products and Chemical Corporation, Reel's Cove Mine, at which time Mr. Paul Callis, Everett Roberts, Ewing Hampton, representing Tennessee Consolidated Coal Company, and W. J. Travis and Herschel Daffron and Jim Miller, representing Tennessee Products and Chemical Corporation, and a committee representing the mines on the two companies' property; and Albert Pass, George Gilbert, I believe Allen Condra, and a committee representing the local unions, discussed the matter as to the vacation pay and the withholding of the royalty by these two large companies I just mentioned.

"Q The welfare royalty?

"A The welfare royalty. The small operators were in accord and so stated, but we had considerable difficulty getting the letter of transmittal of the authorization to them and the authorization itself properly worded to suit the company.

"Q Tennessee Products and Chemical?

"A And Tennessee Consolidated Coal Company. So on several occasions they would call their offices, either in Chattanooga or Nashville, Tenn-
[1142] essee, and read back what we had agreed upon to see if it was right, and finally we did get it agreed to.

"The next morning we had a meeting scheduled for the old commissary building at Whitwell, Tennessee, at which time all of the operators on the property of Tennessee Consolidated Coal Company and Tennessee Products and Chemical Corporation were present, along with the representatives of the two large companies, and the District and local unions, met and the small operators executed the contract and authorizations.

"Q This was the contract——

"A This was the amendment effective September 1, 1955.

"Q They signed that and authorizations for the withholding of Welfare Fund money?

"A Yes, sir.

"Q And they could go back to work?

"A They did go back to work.

"MR. COMBS: The 1955 amendment?

"A Yes.

"Q Do you recall attending any other meetings with coal operators with respect to Southeastern Tennessee field subsequent to that time?

"A Yes, I recall I met with representa-
[1143] tives of the Sewanee Coal Operators Association and local and District officials in the office of Mr. Peek, who is a representative of the Conciliation Department, Department of Labor.

"Q This was in late '62 and early '63?

"A I only met one time and I believe it was in November. I am not positive but I only met one time.

"MR. COMBS: November of '62?

"A 1962, yes, sir.

"Q Do you recall whether or not you attended any meeting between the representatives of Tennessee

Products and the International Union in Washington in connection with the contract amendment of 1958, in December 1958, were you present?

"A Not with Tennessee Products, no.

"Q Were you down into the Southeastern coal field in connection with any matter pertaining to Tennessee Consolidated's Coal Valley Mine on absenteeism?

"A Yes, I was.

"Q When was this, do you recall roughly, was it in 1959?

"A I just can't recall, but I was there. I was only there one time on that problem but I can't recall the year.

"Q What took place then?

"A The company, the officers of the Tennessee Consolidated Coal Company, had called the District and advised that they were having consider-
[1144] able trouble with absenteeism at their mine and wanted to know what we could do about it.

"I was assigned to go down to see what I could do about it. So I met with the committee of the Palmer local union and Mr. Everett Roberts, who was in charge of the mine, operation of the mine, and maybe another representative or two of the company, and we discussed the matter, and at the end of the discussions I advised them I would be glad, and I thought it would be helpful, to talk to all of the men and advise them their responsibility under this contract, and the importance of giving this company an honest day's work and producing all the coal they could.

"So they set it up so that I could be at the man trips as they went in the mine to talk to everybody rather than have a meeting of the local union, recognizing the fact that sometimes a lot of the people don't attend

the meetings of the local unions.

"MR. COMBS: You mean they have absenteeism there too?

"A Yes. So I met two shifts, and on each of them I advised that they had a responsibility under that contract to be there to work unless they were sick or injured or had permission from the company to be absent, and that the United Mine Workers of America certainly didn't condone this chronic absenteeism, and that if the company took action and their
[1145] action was justified by the action of their people not working, we absolutely would sustain the action of the company. That's about it.

"Q That is all that happened?

"A Yes, that's all that happened, and we met in the bathhouse.

"Q Did you get any response from the men?

"A The ones I got response from said it ought to have been done some time ago.

"Q This talk by you?

"A Yes.

"Q Did you attend any meeting with Tennessee Consolidated representatives in early 1960 in Knoxville or Chattanooga, or at Palmer?

"A Let's see.

"Q This was after Tennessee Consolidated cancelled the UMW contract, I think at the end of December 1959, with a 60-day waiting period.

"A I met with the representatives of the Tennessee Consolidated Coal Company, Stanlee Hampton, Paul Callis, that's all I can remember of them being there, President Ridings of District 19, and a committee from the local union, at the Farragut Hotel here in Knoxville

about that time, but I can't recall if that is the correct time or not.

"Q What was that meeting about?

[1146] "A The company wanted to get us to agree with them, as I recall, to circumvent the contract, they said pay less than what the contract provided, and we just disagreed.

"Q There was no negotiation of any different contract on the Bituminous Coal Wage Agreement?

"A No, negotiation. They didn't come to negotiate.

"Q They wanted to get around the contract, you say?

"A Yes.

"Q In what respect?

"A In respect to wages, in respect to royalty, and I believe, if I recall, I can't recall all of it at this time, but it seems to me that those were the two major——

"Q They wanted an agreement from you to pay a different scale or different welfare rate than what was contained in the national contract?

"A Than what was in effect at the mine at that time.

"Q Of course, the contract had been canceled. In other words, were they not seeking a different kind of a contract to be effective in future operations?

"A As I recall, what I just stated was what was said.

"Q Did you attend a subsequent meeting in Chattanooga?

"A Yes, I attended a meeting, I believe I did.

"Q Was that a similar sort of meeting for the same

[1147] purpose?

"A I believe so; I believe so.

"Q Was the company trying to base wages on productivity?

"A Let me think now—at the moment I can't recall, I would have to check.

"Q Did you attend a subsequent meeting at Palmer about this?

"A At Palmer?

"Q Yes.

"A I don't recall.

"Q Do you recall whether or not Mr. Roberts came up to Middlesboro, Mr. Everett Roberts, some time in March after that, of 1960?

"A I can't recall that at this time.

"Q Did you attend any meetings with Allen and Garcia representatives?

"A Yes, I did.

"Q Where were those meetings held?

"A At the office of the Tennessee Consolidated Company, Palmer, Tennessee.

"Q Did you attend any in Washington?

"A Yes, I did.

"Q Were these meetings about the same subject matter?

[1148] "A Yes.

"Q What was this matter?

"A The subject matter was the effectiveness—that is not correct—it was the training program that was agreed to between the Allen and Garcia Coal Company and the District and local union, United Mine Workers of America.

"Q Was this the subject matter in the Washington meeting?

"A Yes, as I recall, it was.

"Q Did the District 19 ever fine any local union members for unauthorized work stoppages in the Southeastern Tennessee field after 1950?

"A District 19 held in escrow monies from several local unions in District 19, at the direction of the International Executive Board, for unauthorized work stoppages, but at the moment I can't recall.

"Q Do you have any records on that?

"A Yes, I would have records.

"Q Will you file those records as Collective Exhibit 2?

"A Yes, sir.

"Q Copies of them?

"A Yes.

"MR. COMBS: Subject to our objections on the competency of them. I don't know anything about what he is talking about. I am going to make [1149] an objection until counsel looks at those exhibits, but subject to that, we will advise whether they should be furnished or not.

"Q Do you have them here?

"MR. COMBS: No, it is unexpected. You don't have it in your notice and I don't know what he is talking about myself."

"Q You say that monies were taken out of escrow funds of local unions?

"A No, I said the monies were held in escrow from the returns due the local union, or local unions of District 19, because they had engaged in an authorized work stoppage in violation of the contract.

"Q The National contract?

"A Of the contract, yes.

"Q Do you recall what locals these were?

"A We had several in Harlan County, Kentucky, several in Bell County, Kentucky, and several in Tennessee.

"Q Several in Southeastern Tennessee?

"A I can't recall in which places they were in.

"Q Do you recall any at all in the Southeastern Tennessee field?

"A I can't recall.

"MR. COMBS: So that I can understand it, Counsel, what you want him to furnish, if he does have
[1150] any in Southeastern Tennessee?

"MR. ROWNTREE: That is correct.

"A I can remember one in particular but it wouldn't affect you any.

"Q Was this not in Southeastern Tennessee?

"A No.

"Q But this was an action by the International Union?

"A International Executive Board and approved by the International Convention.

"Q But you cannot recall any at all in the Southeastern Tennessee Field?

"A No, sir, I cannot.

"Q But if there are any you will file such records as Exhibit 2?

"A Yes, sir.

* * *

[1152] MR COMBS: We would prefer, if counsel don't want to at this time, to make the record clear we would like for the counsel to read into the record what we did give him.

[1153] MR. ROWNTREE: I don't mind reading it in, but subject to the actual record.

The listing as I have is Local 5881, which I believe is the Palmer local, January 27, 1957, $100.

October 14, 1957, $100.

March 24, 1958, $100.

October 15, 1958, $150.

February 19, 1962, $150.

Local 8128.

MR. COMBS: Reel's Cove.

MR. ROWNTREE: Reel's Cove local, February 13, 1957, $100.

October 14, 1957, $100.

October 15, 1958, $150.

Local 7083, the Pocket local, October 15, 1958, $150.

Local 7244, Daus local, October 15, 1958, $100.

"Q The District does have the power to levy such fines against local union members, does it not?

"A The District has the power to comply with the direction of the International Executive Board and the International Convention according to their instructions.

"Q Do you recall if Section 10 of Article XXI is still in the Constitution of the International Union?

"A I don't recall if it is or if it is not, [1154] I don't recall.

"Q (I handed the witness a book.) Is this a copy of the Constitution of the International Union adopted at the Cincinnati convention of 1960?

"A It states so on here, on the cover of this book, and I believe that it is, yes.

"Q We will file that as Exhibit No. 3, and if it is not a correct copy you will have the privilege of sub-

stituting a correct copy.

"A I believe it to be."

"MR. ROWNTREE: The only provision we are pointing out is the one on Page 81, being Section 10 of Article XXI, which reads:

'Any member or members engaged in an unauthorized work stoppage resulting in shutting down a mine shall, after due notice, and hearing, upon conviction suffer such penalty as may be imposed upon them by their respective district organization.'

"Since that is the only provision we are talking about, I see no need for making copies of this Constitution, if it is agreeable with counsel.

"MR. COMBS: That is all right.

"MR. ROWNTREE: And we will withdraw it as Exhibit No. 3 because we have got enough encumbrances in the record.

[1155] "Q Did you bring any records about funds from the International and funds going from District 19 to local unions or local union members benefits in the Southeastern Tennessee field?

"A Yes, I did.

"Q Could I look at those?

"A Yes.

"Q Mr. Pass, have you prepared or have you checked over a listing of amounts received by District 19 from the International Union for the period 1955 and subsequent years?

"A Yes.

"Q Do you have that with you?

"A Yes, I do.

"Q I would like to introduce that as Exhibit 3 replace the withdrawn exhibit."

Pull that out of the back.

THE COURT: Exhibit No. 118. What does this purport to be?

MR. ROWNTREE: These are funds from the International Union to District.

MR. COMBS: Is counsel now offering that as an exhibit for the record?

MR. ROWNTREE: Yes.

MR. COMBS: We object to it, your Honor, as being irrelevant. The exhibit purports to show monies
[1156] forwarded to District 19, United Mine Workers of America, 1955, commencing in 1955. The exhibit shows three columns, the date requested is given, the amount of the check and the date of the check.

That exhibit runs through 1956, 1957, 1958, 1959, 1964, December 23, 1964. In other words, it commences, your Honor, in January 26, 1955, and closes December 23, 1964.

We have not raised a question as to the responsibility of the International Union for actions of the District officials and District representatives who are engaged in contract activities or organizing activities. Those questions are not raised in the pleadings, they are raised in the theory. These amounts of money represent, according to the testimony of the witness here, Pass, represent monies that were requested by the District in the nature of loans from the International Union and went into the general treasury of the District and were disbursed from that general treasury without any earmarkings whatsoever except that they were classified as loans from the International Union.

We submit this is irrelevant to this case.

THE COURT: Can any agreement be worked out by the parties as to the responsibility of the International for District 19 officials' actions in the course of the scope of their employment with District 19, or have you attempted to do that?

[1157] MR. COMBS: We have done it in this, we have not raised any objections or raised any exceptions in the pleadings or in the admission of evidence as long as it was shown that it was a District official or a District representative and that had to do with organizing or with the contract maintenance or negotiation.

We think the courts have held that we pretty well are liable for that, that is, the District or administrative arms from the International Union and we have so stated that and we state it now and we see no relevance to the activities between one administrative arm and the other.

THE COURT: All right. What do you say, Mr. Rowntree?

MR. ROWNTREE: I think that this is very essential evidence with respect to the conduct of the International Union during various periods of time of stoppage in the local field and with particular reference to the stoppage of '63 and '64.

This has to be taken into consideration, along with other activity of the union, along with activity with respect to the levying of fines, a comparison of the levying of fines on local unions through these periods of stoppage on the one hand and assisting the local union members through these periods of stoppage on the other with actual funds from the International Union.

[1158] MR. COMBS: Now, I disagree with counsel. We are talking about this particular exhibit. There is no evidence whatsoever that any of these monies were used to help the local union to finance a strike.

We have tried to furnish counsel with the records of the local unions who have been fined or whose monies have been held in escrow, he has that, and I submit that this exhibit will have no showing whatsoever as to whether or not that monies have been paid to the locals. Counsel should have asked that question. I submit also that counsel has asked us, and we have furnished him, and I am sure that he will come to it in due time, that local unions in the Southeastern coal field which have been furnished with relief, the itemized amounts of it. I reserve the right, of course, to make any objections that I may think are pertinent when counsel offers it, but counsel does have it and I submit that the exhibit that we are talking about is districtwide and it isn't segregated to any particular section of the field, it went to the whole district and it went for their internal affairs.

MR. ROWNTREE: This second exhibit that he mentions shows the money coming into this coal field during these stoppages, a rather sizable amount supporting the local union members through these periods of stoppage. This was money that came down from the International Union to the District,
[1159] into the District treasury and then from there it goes down to the local unions during the times when the union was saying that it was not supporting these strikes and had nothing to do with them.

THE COURT: Well, gentlemen, it may develop

that this will be irrelevant but it appears at the present time that I am not in position to rule that it is irrelevant.

I believe I will overrule the objection and allow the exhibit to be introduced. If it later develops in light of all of the evidence it is irrelevant the Court will certainly disregard it.

MR. COMBS: Since the Court has ruled, counsel has reminded me of this proposition that we are discussing about here in the nature of clear proof of particular instances. This is a blanket attempt to blanket in a lot of evidence that isn't itemized or particularized in the slightest.

Now, counsel is making remarks here about the International denying that they supported these strikes. We made no such general denial of that, we made no admission of it. We think it is up to him to prove that on what particular strike he is talking about and what the issues were. I think it has been very clear up to now, the evidence that counsel has submitted on these strikes and work stoppages, it has been a varied conglomeration of causes that would require Solomon to try to get a pattern in connection with the
[1160] disputes that arise at these strikes, ranging from, as your Honor will recall, the work stoppage of a local union over the death of one of their members, a pensioner, they were off three or four days and got fired because they had seniority.

All of these items will have to stand on their own feet, as we see it. We made no general denial and we don't think we can and we don't think counsel can make the general charge without proving it by clear proof.

MR. ROWNTREE: I will grant you that it takes a Solomon to figure out all of the turmoil in the field but there is certainly major areas of time involved in this case and we are attempting to show the pattern of sustaining efforts of the District and the International to those periods of time. We don't intend to read all of this Exhibit 118. I would like to give the annual amounts coming from the International to the District.

(The compilation referred to above was marked p118 and received in evidence.)

MR. ROWNTREE: In 1955, $72,000.
1956, $44,000.
1957, $70,500.
1958, $91,500.
1959, $2,473,000.
1960, $176,850.
1961, $249,000.
1962, $178,500.
[1161] 1963, $449,750.
1964, $872,640."

"Q This Exhibit No. 3, Mr. Pass, the first sheet shows money forwarded to District 19, United Mine Workers of America, 1955, showing the date requested, the amount of check, and date of check?

"A Yes, sir.

"Q I take it the date requested is the date of the District to International Union?

"A Yes, sir.

"Q And the amount of the check is the amount that was transmitted from International to the District, and the date of the check would be the date of International's check drawn to the District?

"A Yes, sir.

"Q What do these funds represent?

"A These funds were requested from the International Union to help defray the expenses of District 19, United Mine Workers of America.

"Q Did they go into the general treasury of the District?

"A Yes.

"Q Were the various expenditures of the District drawn against the general treasury?

[1162] "A Yes.

"Q Of various sorts?

"A Yes, sir.

"Q Were these deposits made in the National Bank of Washington?

"A Yes.

"Q Is that where you maintain the District bank account?

"A Yes.

"Q Are the rest of these sheets of similar nature for the purpose of the funds?

"A Yes.

"Q I notice there is an extraordinarily large amount in 1959 in the total of $2,473,000. Why did the amount increase to such proportions in 1959?

"A Because of the distressed condition of the members of our unions and their families in certain areas of District 19 where the coal operators had canceled the contract and refused to execute a contract, and it was necessary to provide food, clothing, et cetera, to sustain these members and their families during this period of time.

"Q Do you recall whether or not this was mainly

true in Northeastern Tennessee and Eastern Kentucky?

"A It was to my recollection all true.

"Q Throughout the whole district?

[1163] "A No, sir, except Southern Tennessee and Middle Tennessee.

"Q Talking about Middle Tennessee would be the Monterey area?

"A Yes.

"Q Do you recall whether or not it was the operators who canceled contracts at that time or United Mine Workers?

"A We canceled some and they canceled some.

"Q Who canceled most of them?

"A We did.

"Q Was this at the time the 1958 amendment was coming in?

"A Yes.

"Q I notice at the end of 1961 you have an additional amount of $12,500, December 27, 1961. That amount would be included in the total amount of 1962, I take it?

"A Yes, or it was all deposited to the treasurer of District 19.

"Q I notice a large amount of $449,750 was transmitted from International to the District, the year 1963. Can you explain why that amount was so large at that time?

"A The vast majority of that amount was for relief for our members and their families in Southern Tennessee, because of the failure to agree upon a contract with the operators in Southern Tennessee, and, of course, to assist our people as I testified

[1164] in the other instances.

"Q What about the amount of $872,640

in 1964?

"A The same. No, excuse me. Part of that is for other places in District 19, and other expenses of District 19, as against what I said, the majority of being in Southern Tennessee.

"Q Did you have a sheet prepared showing the amounts of disbursements by District 19 for the benefit of local union members in the Southeastern Tennessee coal field?

"A Yes, I did."

MR. ROWNTREE: We will file that as Exhibit 119.

MR. COMBS: If the Court please, we object to the filing of this exhibit on the same ground we did the prior exhibit, that it is irrelevant to any issue in this case. We add the additional reason that this exhibit clearly shows that these monies were disbursed for relief purposes. The Norris-LaGuardia Act specifically holds or provides that the payment of relief to members of labor unions will not be prohibited or shall not be taken as evidence of any unlawful act. This is a right guaranteed by the Norris-LaGuardia Act because of the abuse at that time, according to the history of the act, of the processes of the courts and in that instance they were talking about the Federal Courts and the injunctive procedure where in many instances the courts enjoined the unions from aiding in any way

[1165] the distressed or non-distressed local members who may or may not be on strike or may be trying to get recognition in the coal fields

and we say that this type of evidence is not admissable in this case, that this union had a right provided by the Norris-LaGuardia Act to disburse these sums of monies and that they cannot be used as evidence to

hold the union liable for a violation of the Antritrust Act or a conspiracy or any other illegal act.

THE COURT: What do you say about that?

MR COMBS: We add that to our first objection.

THE COURT: What do you say about the Norris-LaGuardia as it may or may not apply to this exhibit?

MR. ROWNTREE: I say that the union clearly has a right to support its distressed members. We are not challenging that right. We are saying that the distress is caused by the failure to come to an agreement upon a contract in 1962, December, and 1963, January negotiations as Mr. Pass indicates in his answer here on Page 42, that this distress was caused because of the failure to agree upon a contract.

We are pointing out the extent of this distress in this coal field arising from the failure to agree upon a contract at that time and this bears upon the nature of the union's purpose and intent with respect to failing to agree or the failure to agree upon any contract other than the National Bituminous Coal Wage
[1166] Agreement at that time, particularly at that time. There are other periods of time involved here, one in particular is the 1955 authorization strike, authorization of Welfare Fund money strike.

THE COURT: May I see the exhibit?

(The document referred to above was handed to the Court.)

MR. COMBS: If the Court please, may I comment on counsel's remarks before you rule?

I don't think that there could be any more of a classic example of a labor dispute than what counsel has just referred to here, that the furnishing of these funds was the result of the failure of the union to be

able to secure a contract from the employer. I don't know of any more classic example of labor activity than that and I don't know any more important situation than could arise than that the union should be permitted to support its members by any funds available through contributions from the public or any other source that it can get to support their members in a situation of that kind and if that can be used, just because counsel says that they have purposes other than securing a contract, that that takes it out of the prohibition of Norris-LaGuardia, I say that the act itself would be practically of no benefit whatsoever.

THE COURT: Will you provide me with
[1167] the citation of the provision in the Norris-LaGuardia Act which you are specifically referring to?

MR. COMBS: I will be glad to furnish it.

THE COURT: Do that.

MR. COMBS: I don't have it in my memory but it is in the list of matters that cannot be prohibited by Federal Courts, there is an enumeration in that statute and I have the citation of the statute here.

THE COURT: I believe I will reserve any ruling upon this at this time and if either party has any matter they would like to cite I would like to have an opportunity to check that ruling before ruling.

MR. ROWNTREE: I would like to make our position clear that this is a suit based upon the Antitrust Act, that particularly in a situation where the claim in the suit is that the union has agreed, made an agreement that they will not make any different contract than that made with certain major coal companies or certain major companies in the industry and the claim

is that this is for the purpose of restraining trade of competitors and where negotiations go on to make a change in the national contract terms there is a clear issue as to whether the union was representing the membership or merely abiding by an illicit agreement and when the distress in the local union members con-
[1168] tinues for a clear period of two years, according to these records, because of the failure of negotiations, we think this has a strong bearing under the Antitrust Law with respect to whether a violation has occurred.

THE COURT: Exhibit No. 119, yes, allow it to be marked for identification.

(The compilation referred to above was marked P119 for identification.)

MR. COMBS: May I add just one remark? I think that I should state at this time that our theory, as stated in the pre-trial conference certainly is at variance with what counsel states is the position he has taken here. I think that our theory of our case is that the question of whether the union acts wisely or unwisely or whether it has wisdom in the policies that it pursues or not is not for this Court to decide.

The question is whether or not they had combined with other labor groups for the purposes of this conspiracy.

We say that unilaterally that the union has a perfect right to pursue a course of high wages, better working conditions, or they can pursue a course wherein they would try to gear its activities to the employer who has the least ability to pay in the industry.

Now, that course, the choice between these two courses, is up to the union and it isn't a question of

the courts to decide on the wisdom or the unwisdom of that.

MR. ROWNTREE: That's the language—

[1169] MR. COMBS: That states our position.

MR. ROWNTREE: This is the language of Mr. Justice Goldberg, your Honor, Mr. Justice White in the concurring opinion points out in clear language that one bargaining unit cannot encompass the terms of collective bargaining upon another bargaining unit and we insist that is what was going on.

THE COURT: All right.

MR. CAMERON: Page 43, Line 3, I think.

"Q Were these expenditures by District 19 represented in Exhibit 4 out of the general treasury of District 19?

"A Yes.

"Q I notice on the sheet in 1955 an expenditure of $16,648.29 in November, 1955. Was that the result of this period of shutdown of mines that we talked about in connection with vacation and royalty?

"A Yes."

MR. COMBS: If the Court please, our objection, of course, runs in addition to the exhibit to any testimony in relation to the exhibit.

THE COURT: Yes.

"A Yes, for relief for the members and their families.

"Q Who were eligible to receive these

[1170] benefits?

"A Those who were employed at the time that the program was instituted, those who had no income.

"Q In what form was this disbursed, was it by check?

"A In 1955 it was paid direct to the grocery stores by the District upon the issuance of a voucher by the local union, which was picked up and forwarded to the District from the various grocery stores which were selected by the individual members and we paid the store direct.

"Q It didn't make any difference which store if they had a proper voucher?

"A That's right.

"Q Did you change that procedure in later years?

"A Yes. Later we changed the procedure. I can't recall exactly the time we changed it but the procedure for the past two years has been in this manner. The eligibility, of course, as I testified, remained the same. A voucher was issued to the member by the local union for groceries with the signatures of the committee attached, and the local union seal attached, and the amount of money to cover this expenditure being forwarded to the secretary of the local union and deposited in the bank, and checks written by the local union to the various grocery stores involved.

"Q In other words, the District would send a check to a local union which was deposited and these vouchers were cashed by the local union member?

[1171] "A No, they were not cashed, they were traded at the grocery store, for which they could only receive groceries, and limited on cigarettes, no gasoline, and no due bill."

Skip down to Line 21.

"A Then once a month at the beginning we issued a check to the financial secretary of the local union involved in the same manner, which the local union would write a check to the individual member which was for his use for utilities, drugs, et cetera.

"Q Now, the grocery store that got one of these vouchers, could it deposit it in its bank account the same as a check?

"A No, sir.

"Q How would it handle that voucher?

"A The secretary of the local union would either pick the voucher up from the grocery store or the local store would send it to the secretary of the local union in order that the store could receive payment.

"Q A check payment?

"A Yes, a check payment.

"Q Written by the local union?

"A Written by the local union.

"Q Was that the system going on in 1961 through '64?

"A I believe from 1962 to '64, I believe that to be correct.

[1172] "Q And before that time it was like you first stated?

"A The District wrote the check direct to the grocery store.

"Q Did the District audit records of the local unions concerning these vouchers and the checks made directly to individual members?

"A The local union is required to audit their records, and the District, of course, my office, keeps permanent check on each of the local unions as to who receives it, et cetera.

"Q What sort of records would the local union have to check up on it?

"A They would have bank statements, they would have canceled checks, they would have all of the records necessary to take care of that except that I have the vouchers that they issued because of the fact that they

have no place available to keep them filed. They have no offices, they mostly do their work out of their homes and have no place to keep all that accumulation.

"Q These would be the grocery vouchers given to individual members?

"A Yes.

"Q That were taken by grocery stores and turned into the local union in exchange for a check?

[1173] "A Yes."

"MR. COMBS: Are the secretaries of the local unions required by the union Constitution and by the Federal Law to be bonded for the performance of their service in connection with any monies received and expended by them?

"THE WITNESS: Yes, they are, and I am further required by the Constitution to see that they are bonded by reason of my office.

"Q Was there any food stamp program in effect in Southeastern Tennessee?

"A There is now.

"Q How long has that been going on?

"A Roughly I would say it has been going on two years.

"Q What is that program, is that a federal relief program?

"A It is a program that is participated in by both the State and Federal Government, in which they provide food stamps for people according to their monthly income.

"Q Do they have to pay something for these stamps?

"A Yes, they do.

* * *

[1417] MR. ROWNTREE: The deposition of John L. Lewis, taken on behalf of the plaintiffs, at Tampa, Florida, the 18th and 19th of January, 1961.

(Thereupon, Mr. Rowntree read the questions and Mr. Chambliss read the answers as follows:)

DIRECT EXAMINATION

"Q What is your name, sir?

"A John L. Lewis.

"Q Where do you reside, Mr. Lewis?

"A I am a resident in Washington, but I am a citizen of the State of Illinois.

"Q And you are one of the trustees of that fund, United Mine Workers Welfare and Retirement Fund?

"A Yes.

"Q Are you chairman of that Board of Trustees?

"A Yes.

"Q How long have you been chairman of the Board of Trustees of the fund?

[1418] "A Perhaps twelve years.

"Q Would that include the period before the 1950 contract?

"A Partially.

"Q You were also president of the United Mine Workers of America International Union?

"A Formerly, yes.

"Q When did you become president of the International?

"A Vice president, 1917. Acting president, 1919. President in fact, 1920.

"Q And you were president of the International Union from 1920 up until the time of your resignation?

"A Yes, sir.

"Q And when was the effective date of your resignation?

"A January, 1960.

"Q 1960. Are you presently president emeritus of the International Union?

"A Yes.

"Q Are you still on the same salary basis as you were as president of the International Union?"

MR. COMBS: We have an objection.

"Q Still on the same salary basis as you were as president of the International Union?

"A No, I have a pension.

[1419] "Q You have a pension from the Union.

During the time that you have been on the Board of Trustees of the Welfare Fund, did you receive compensation as trustee from the Fund?

"A No.

"Q The pension that is paid to you by the union currently, is that from the pension trust established by the union for its own employees?

"A Yes. "

"Q Now, Mr. Lewis——

MR COMBS: (Interposing) Pardon me, Counsel, because of the confusion that exists there are questions and answers that I'd like to read in connection with this, if counsel has no objection.

MR. ROWNTREE: No, I think we can clarify it quickly. This was a pension trust established by the union for its own employees and not for the United Mine Workers of America Welfare and Retirement Fund.

MR. COMBS: Right, no connection whatsoever.

"Q Now, Mr. Lewis, is the International Convention of the United Mine Workers of America the highest official body of the International Union?

"A It is the supreme authority in the union.

"Q Does it customarily meet every four years?

"A By constitutional requirement it
[1420] meets every four years now; but, of course, special conventions can be constitutionally inaugurated or held when required in the opinion of the International Executive Board.

"Q But you have held conventions in the years 1948, 1952, 1956, and 1960; is that correct?

"A Well, I don't follow your arithmetic but every four years.

"Q Who has the supreme authority in the International Union when the convention is not in session?

"A The Executive Board. The International Executive Board of the United Mine Workers of America.

"Q Now, most of the activities of the union, particularly with respect to negotiations with operators on collective bargaining, occur when the International Union Convention is not in session, is that correct?

"A Yes.

"Q Now, does the convention have any way of knowing what the International Executive Board and the International officers of the union have done in between conventions, or do they have any privilege of proving such activities?

"A If negotiations are complete or are in existence during the time the convention is in session, it will come before the convention. It frequently has in the history of the organization.

"In the meantime, however, the constitutional

[1421] provisions covering such matters provide for proper attention to be given to it by the officers of the union, by the International Executive Board, and by an International Policy Committee, which the convention sets up as an advisory board to the Scale Representatives and to the qualified officers of the union, representative of all districts.

"Q If negotiations are completed and a contract is signed after a convention session has terminated and before the next convention session, does the next convention have any way of passing upon the activities of the officers in that interim?

"A The conventions of the future exercise no function because the preceding convention has designated its authority passed on that to the policy committee which is created according to the provisions and is representative of all districts. The policy committee acts in the meantime as an intermediate body between the convention and the executive board and the elective officers.

"Q Well, does the next succeeding convention have any way of knowing what has transpired in the meantime?

"A A full report in detail is made to the convention about the work of the organization during the preceding four years and it is subject to their approval, subject to the convention's approval.

[1422] "Q The reports that are made by the officers and the executive committee, do they give full, correct information to the convention of what has transpired?

"A It is certainly given correct information; and 'full' is a relative term. They certainly give all per-

tinent facts but, of course, do not crush the convention delegates with excessive detail.

"Q These reports are prepared to present to the next succeeding convention?

"A Which reports?

"Q The reports that you mentioned, of the activities of the officers and executive committee.

"A They are prepared in advance of the convention date which is fixed by the constitution.

"Q Are they prepared by a duly authorized officer of the union?

"A Yes.

"Q These reports are set forth in the minutes of the convention?

"A Yes. The record of the convention.

"Q And the action of the convention in passing on those reports is reflected in the minutes of the convention?

"A I have always assumed so, that they truly reflect it.

"Q The International Convention maintains complete minutes of what transpired at each convention?

[1423] "A Well, the convention employs a public stenographer to take down what requires a stenographer and, to the best of my knowledge and belief, they are verbatim records of what transpires in the convention.

"Q And they are kept to maintain a record of what did transpire and what action the convention did take on various matters?

"A Well, they are printed in book form, like the books in front of you, and are circulated to the membership. Most of it is published in the United Mine Workers Journal and a full and complete distribution is

made, and they are available for record."

MR. ROWNTREE: I think that we will skip the introduction of the exhibits that were entered at that point because I believe the pertinent matters are set forth in the record itself here.

"Q Mr. Lewis, a part of the International officers' report to the 1956 convention."

This is Page 256.

MR. CHAMBLISS: Two hundred fifty-six.

"Q Mr. Lewis, a part of the International officers' report to the 1956 convention is entitled United Mine Workers Journal, and I refer to Page 289 and 290 of the 1956 convention minutes, Volume No. 1, which would be Exhibit 31.

"The first paragraph of that portion of the [1424] report states: 'The United Mine Workers Journal, official publication of the United Mine Workers of America, has the primary function of being the direct link of communications between the union and the membership. As such, the Journal makes every effort to report fully and faithfully all official UMWA activities by the International Union, the district and local unions. In addition the Journal reports activities of the UMWA Welfare and Retirement Fund and the Anthracite Health and Welfare Fund. The Journal also intends to keep the membership informed on outstanding new developments of our industries, both anthracite and bituminous.'

"Mr. Lewis, is that a correct statement of the purposes and functions of the Journal?

"A That is a correct statement of the policy and intent of the organization, to have the Journal report in the fashion thus described.

"Q Mr. Lewis, this is a somewhat involved case. As we go along I would like to state our contentions as to which specific questions are addressed to you. It is for the benefit of counsel as well as yourself.

"Well, it is almost necessary to do that right at this time. Our first series of questions here is with respect to a contention that we point out to the witness here, that is that we make in this case a contention that the conspiracy charged was formed with the [1425] making of the 1950 National Bituminous Wage Agreement, that the reaching of an understanding between the union and the large coal operators in 1950 is indicated by the contrast in bargaining before 1950 and after 1950."

Now, I go on and ask him a question.

"Now, as general background, Mr. Lewis, do you recall that the 1952 wage increase was brought before the Wage Stabilization Board for approval?

"A I do not now recall it as a fact nor recall the details, as these succeeding new wage contracts through the years become dim in retrospect.

"Q Yes, sir.

"A And if it is of record that that was the case, I don't question the record.

"Q Now, this paragraph that I am referring to there on that Page 1906 states—this being a letter addressed to the Economic Stabilization Administrator by Mr. Welly K. Hopkins, General Counsel, UMWA—he states in this letter that Mr. Moses, President, Bituminous Coal Operators Association, had filed a statement in support of a requested review of the Wage Stabilization Board's recent ruling on the bituminous coal contract of 1952 and he states:

"'This letter, in behalf of the union, the United Mine Workers of America, is to affirm and supplement the presentation made in Mr. Moses' statement.'"

* * *

[1429] MR. COMBS: I think that we have, your Honor, I might call attention to counsel and the Court, I think we already have a stipulation covering that matter and I think that the stipulation was, Paragraph 1 of the stipulation that was agreed to between the parties here through the Court to the effect that either party may introduce in evidence minutes of Convention Proceedings of the United Mine Workers of America as published by the United Mine Workers of America and may read the contents thereof or any portion thereof into evidence in this action, subject to objection for competency and relevancy and part of our defense is indicated in our theory would go back to 1890 and we intend to connect up through these convention proceedings matters that we will bring up.

[1430] Now, they will be introduced and will be available to counsel and we certainly have furnished him everything he has asked for and we would like at this time, with approval of the Court to introduce as exhibits to the reading of the Pennington testimony, particularly Mr. Lewis and some of the rest of them, we would like to introduce the proceedings from 1934 up through and including 1964 for the use of either party.

MR. ROWNTREE: I think under the stipulation this would be admissable.

MR. COMBS: I think so.

MR. ROWNTREE: With objections to competency and relevancy.

THE COURT: Very well.

MR. ROWNTREE: So I can mark a set of them, start out with the exhibit and there will be twelve of them. What exhibit would it be?

THE COURT: One hundred twenty-five will be the next exhibit in order.

MR. COMBS: If the Court please, we offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America, consisting of one volume, of 1934, and ask that it be marked.

THE COURT: Exhibit 125.

[1431] (The 1934 convention proceedings referred to above were marked D125 and received in evidence.)

MR. COMBS: We offer the Proceedings of the Convention of the United Mine Workers of America, 1936, consisting of one volume.

THE COURT: One hundred twenty-six.

(The 1936 convention proceedings referred to above were marked D126 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1938, consisting of one volume.

THE COURT: Exhibit 127.

(The 1938 convention proceedings referred to above were marked D127 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America, 1940, consisting of one volume.

THE COURT: One hundred twenty-eight.

(The 1940 convention proceedings referred to above were marked D128 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1942, consisting of one volume.

THE COURT: Exhibit 129.

(The 1942 convention proceedings referred to above were marked D129 and received in evidence.)

[1432] MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1944, consisting of one volume.

THE COURT: Exhibit 130.

(The 1944 convention proceedings referred to above were marked D130 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1946, consisting of one volume.

THE COURT: One hundred thirty-one.

(The 1946 convention proceedings referred to above were marked D131 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1948, consisting of one volume.

THE COURT: One hundred thirty-two.

(The 1948 convention proceedings referred to above were marked D132 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1952, consisting of one volume.

THE COURT: One hundred thirty-three.

(The 1952 convention proceedings referred to above were marked D133 and received in evidence.)

MR. COMBS: We offer as an exhibit the
[1433] Proceedings of the Convention of the United Mine Workers of America of 1956, consisting of one volume.

THE COURT: One hundred thirty-four.

(The 1956 convention proceedings referred to above were marked D134 and received in evidence.)

MR. COMBS: We offer as an exhibit the Proceedings of the Convention of the United Mine Workers of America of 1960, consisting of one volume.

THE COURT: One hundred thirty-five.

(The 1960 convention proceedings referred to above were marked D135 and received in evidence.)

MR. COMBS: We offer as an exhibit the joint report of the International Officers of the Convention of 1964 with the statement that the proceedings are not out from the printer as yet but this report will be in the proceedings and it is the officers' reports.

THE COURT: Exhibit 136.

(The joint report for 1964 referred to above was marked D136 and received in evidence.)

MR. ROWNTREE: Mr. Combs, you don't have an extra copy of those last two, do you?

MR. COMBS: Yes, I think I have, I think I have.

MR. ROWNTREE: I believe it was your desire to have the Court follow the reading of these passages from the minutes.

[1434] MR. COMBS: No, that is not my desire. I think it would take too much time. My sole point was that when you are reading and talking about these pages that it be in as an exhibit and can be obtained through these exhibits.

MR. ROWNTREE: All right. And we were reading, we were talking about Mr. Moses' statement to the earlier bargaining at the bottom of Page 257, that last paragraph.

(The reading of the deposition was continued.)

"Q Now, I will ask you does not this statement filed by Mr. Moses there at Pages 79 through 97, does that not give a condensed history of the bargaining between the union and the operators in the period before the 1950 contract?

"A I presume that it purports to do that, yes. As to whether or not it does, I don't know.

"Q The reports of the International officers and the executive committees, as found in the various convention minutes, would amplify and show the correctness of any statements made in this summarization on those particular pages?

"A I do not know that it would. I have had no opportunity to digest this document in relation to other documents filed or statements by counsel for the United Mine Workers to the governmental agency.

"I presume that basically it gives to the government tribunal full information on the wage contracts

[1435] as required from both parties by the governmental agency, and antecedent to possible approval by the government of the contract.

"I have no keen recollection of any of the details which might be or which might not be contained in this record.

"Q The record would have to be searched and studied in order to be fully familiar with all of these details. And isn't it true that some of these conventions involve pretty long reports by the International officers to the various conventions?

"A Quite voluminous."

I would like to read at this time, your Honor, this condensed version of the bargaining between the coal companies and the union before 1950.

Going to Page 262.

MR. COMBS: May I point out that counsel started the reading from the 1956 minutes.

MR. ROWNTREE: That is correct.

MR. COMBS: As an exhibit here.

MR. ROWNTREE: This is a statement by Mr. Moses, to the Economic Stabilization Administrator.

(The reading of the deposition was continued.)

"Historically, there have arisen problems in labor relations that are peculiar to this industry. In
[1436] the last decade, failure of the collective bargaining process to function has inevitably led to seizure and operation by the Federal Government.

"The first instance of this was in 1943. This seizure lasted for five months and twelve days from May 1, 1943, to October 12, 1943.

"Twenty days later, on November 1, 1943, the industry was seized again. This seizure lasted for

six months, from November 1, 1943, to May 31, 1944. This seizure was not terminated in the Southern producing area until June 21, 1944.

"There was a third seizure of certain coal mines that became involved in supervisory strikes during September and October, 1944.

"There was a fourth seizure, involving certain mines from April 10, 1945, until June 3, 1945.

"The fifth seizure occurred when the coal industry was seized on May 21, 1946. This period of seizure and operation by the Federal Government continued for more than 13 months until June 30, 1947. A more detailed recital of the events of this last seizure period may be found in the reveal of post-war wage contract negotiations which is attached herewith as Exhibit 1.

"The attachment commences on Page 87.

"Before the Economic Stabilization Admin-
[1437] istrator, Economic Stabilization Agency.

"Background of the negotiation of the National Bituminous Coal Wage Agreement of 1950 as amended September 29, 1952.

"Post-war wage contract negotiations in the bituminous coal industry.

"A proper perspective of the negotiation of the 1952 amended agreement in the bituminous coal industry requires a consideration of the course of the industry's post-war wage contract negotiations.

"On March 2, 1946, the United Mine Workers of America served notice of the termination of the National Bituminous Coal Wage Agreement of 1945. Negotiations for a new contract were carried on during that month and thereafter with an Operators' Negotiating Committee representing the management side of the industry.

"The negotiations failed to produce agreement and a nation-wide coal strike started on March 30, 1946. This strike continued for 52 days until May 22, 1946, when the Federal Government seized the coal mines under the authority of the War Labor Disputes Act.

"On April 12, 1946, the Secretary of Labor conferred separately with the operators and the union in an effort to achieve a settlement. His efforts continued over several weeks without success.

[1437] "On April 22, 1946, the Director of the United Nations Relief and Rehabilitation Administration appealed for coal to save Western Europe from communism.

"As May 10, 1946, approached, stockpiles became depleted, steel furnaces were banked, electric power was curtailed, and almost all phases of the nation's industry were approaching a virtual standstill. The number of unemployed due to the strike mounted to over 1,500,000 and many of the nation's cities faced black-outs after first resorting to brown-outs. A conference of the parties with the President of the United States was scheduled for May 10, 1946, but, three hours before the conference, the union offered 2-week truce. This truce was accepted by the operators but was rejected by some of the local unions.

"The majority of the mines resumed operation; the Solid Fuels Administration for War imposed priority controls upon the coal produced during this period.

"On May 16, 1946, the President of the United States made the following statement:

'"Mr. Lewis and Mr. O'Neill came to see me again at ten o'clock this morning. They told me that after further consultations with their committees last night,

they had come to the conclusion that negotiations in the coal mine dispute had completely broken down and that further negotiations would be useless. I, therefore, proposed arbitration. I asked them to con-
[1439] sider this proposal carefully and report back to me with their decision at 5:30 o'clock, Eastern Standard Time, this afternoon.

"'Some 35 or 40 joint meetings had been held between the operators and the miners without agreement. The country is in desperate straits as a result of the recent strike of the coal miners. Coal must be got out of the ground. The whole life of the nation has suffered from the coal strike and will suffer increasingly if there is another stoppage.'

"This proposal was accepted in part by the operators and rejected by the union.

"On May 21, 1946, the President of the United States issued Executive Order 9728 directing the Secretary of the Interior to seize the coal industry. The Secretary issued a mine seizure order effective at 12:01 a.m., May 22, 1946, and pointed Vice-Admiral Ben Moreell as Deputy Coal Mines Administrator. This governmental seizure and operation of the coal industry was to continue for thirteen months. This action was not without precedent, for governmental seizures of the coal industry had occurred previously in the years 1943 and 1944.

"The Executive Order of the President of the United States contains the following preamble:

"'WHEREAS after investigation I find and
[1440] proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of

existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the nation economy during the transition from war to peace; that the war effort will be duly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency;'

"On May 22, 1946, the Secretary of the Interior and the president of the union began wage contract negotiations.

"The coal mines were again idle on May 27, 1946, following the expiration of the 2-week 'truce'.

"On May 29, 1946, an agreement between the Secretary of Interior, J. A. Krug and the United Mine Workers of America was executed. This agreement, commonly referred to as the Krug-Lewis Agreement, provided for an increase in wages of $1.85 per day and established for the first time a Welfare and Retirement Fund into which it was required to pay 5 cents per ton on all coal produced for use or sale. The agreement

[1441] continued the 9-hour day with time and one-half for all time worked over seven hours each day and over 35 hours each week. It added provisions relating to a mine safety code, union safety committees, covering under workmen's compensation laws, and unionization of supervisory employees. The annual vacation pay was increased from $75 to $100.

"On May 31, 1946, the Krug-Lewis Agreement was approved by the National Wage Stabilization Board.

"In July and September of 1946, attempts were made to stimulate negotiation between the union and the operators looking toward negotiation of a contract that

would terminate government seizure, but those proved of no avail.

"On October 21, 1946, the United Mine Workers of America served on the Secretary of the Interior a 10-day notice of a request for a negotiating conference. This was procedure avowedly leading to termination of the Krug-Lewis Agreement, and was based on allegation of breaches of contract and significant changes in government wage policy. The controversy centered around pro-rata vacation payments and measurement of the tonnage to which the Welfare and Retirement Fund payments applied.

"The Secretary denied any contract breaches or any termination rights; however, representatives of the Coal Mines Administration met with represent-
[1442] atives of the United Mine Workers on November 1, 1946. On November 7, 1946, these discussions were recessed until November 11, 1946.

"On November 9, 1946, the President of the United States ordered immediate abandonment of all governmental controls over wages and salaries and virtually all governmental controls over prices. He stated:

"'Today's action places squarely upon management and labor the responsibility for working out agreements for the adjustment of their differences without interruption of production.'

"The Secretary of the Interior met first with the operators and then with the president of the union, on November 13, 1946, in an effort to get the parties together in negotiations.

"On November 14, 1946, the Secretary of the Interior proposed a procedure for negotiations between the operators and the union whereby government pos-

session would end in 60 days.

"The President of the United States, on November 15, 1946, issued the following statement:

"'Secretary of the Interior Krug delivered to the President of the United Mine Workers, yesterday afternoon, a written proposal containing the details of a plan under which the operators and miners could negotiate their differences and the mines would remain in operation.

[1443] "'I am thoroughly familiar with this proposal and I consider it eminently fair to both workers and operators.'"

THE COURT: Just a moment. Let's interrupt right here just a minute to take up another matter.

(Thereupon, the Court disposed of a criminal matter.)

THE COURT: All right. Mr. Rowntree, you may continue now. You were at the point of stating a question based upon, I presume, the statement you have read from the minutes of the convention of 1956?

MR. ROWNTREE: Yes, sir.

(The reading of the deposition was continued.)

"On the same day, November 15, 1946, the United Mine Workers of America rejected the proposal of the Secretary of the Interior and served notice of termination of the Krug-Lewis Agreement as of twelve o'clock midnight, November 20, 1946. The Attorney General of the United States advised the President of the United States and the Secretary of the Interior that no right of termination existed."

"We will skip through the rest of the Krug-Lewis Agreement. Skip to the second full paragraph, page 91."

MR. COMBS: In connection with that, your Honor,

at the proper time we probably will introduce this whole statement in order that this skipped part will
[1444] be reflected in the whole document.

MR. ROWNTREE: Why don't we just read it all now?

MR. COMBS: I think that would be much better.

THE COURT: Exhibit No. 134.

MR. COMBS: On Page 91.

MR. ROWNTREE: "The President of the United States."

MR. COMBS: It is on the middle of Page 90.

MR. ROWNTREE: "The President of the United States instructed the Attorney General to secure an injunction in the United States District Court for the District of Columbia against the contract termination attempt. On November 18, 1946, the Court issued a temporary restraining order restraining the defendants from permitting to continue in effect the notice of November 15, 1946. On the same date, the Office of Defense Transportation ordered a reduction of rail passenger service by 25 per cent.

"A national coal strike began on November 19, 1946, and the Attorney General obtained an order directing the union and its president to show cause on November 25 why they should not be punished for contempt of court.

"A hearing was held, and on December 3, 1946, the union and its president were found guilty of civil and criminal contempt; the Court imposed fines of $3,500,000 against the union and $10,000 against its presi-
[1445] dent.

"The President of the United States prepared to make a speech to the nation on December 8, 1946.

"On December 7, 1946, the president of the union

ordered the union members to resume the production of coal until twelve o'clock midnight, March 31, 1947.

"The government then announced that the dimout, currently effective in 21 states and the District of Columbia would not be extended to the entire nation on December 9 as planned. It was not then decided how soon the existing dimout could be canceled. The Office of Defense Transportation announced that the freight embargo and passenger train limitation could be lifted soon. The scheduled radio speech of the President of the United States was canceled.

"On March 6, 1947, the Supreme Court of the United States upheld the judgment in the contempt case, upheld the $10,000 fine against the president of the union, but reduced the fine against the union from $3,500,000 to $700,000, contingent upon the revocation of the termination notice. This contingency was complied with.

"In the meantime, the President of the United States proclaimed, 'The cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.' This meant that the power of the government to operate the coal mines would cease on June 30, 1947, under the termination provision of the War Labor Dis-
[1445] putes Act.

"On March 26, 1947, a coal mine at Centralia, Illinois, exploded and killed 111 men. The union declared a memorial period from April 1 to April 6. Only 30 per cent of normal production was achieved on April 7 as few mines returned to work. Most mines resumed operation on April 14 and 90 per cent production was attained on April 15.

"Negotiations between the operators and the union looking toward a wage contract that would become

effective upon the expiration of government seizure (when the War Labor Disputes Act terminated on June 30, 1947) began on April 29, 1947.

"While negotiations continued, the Labor-Management Relations Act, 1947, was passed by the Congress over the veto of the President of the United States. Various protest coal mine strikes occurred while the Act was passing through the various legislative stages. On June 24, 1947, 150,000 coal miners were idled; by the next day this figure had risen to 200,000.

"The coal miners began a vacation period of June 28, 1947, and this was extended through July 7, 1947.

"After many sessions dealing with a multitude of issues, the negotiations culminated on July 8, 1947, in the execution of the National Bituminous Coal Wage Agreement of 1947, which became effective on July 1, 1947. This contract provided for $1.20 per day wage increase, reduction of one hour in the work [1447] day from the wartime nine hours to eight hours, and establishment of the United Mine Workers Welfare and Retirement Fund with the payment increased from 5 cents per ton to 10 cents per ton. The detailed basis of the pension payments and welfare payments were to be worked out by the trustees.

"The trustees were unable to agree on the basis for pension payments and on March 12, 1948, the president of the union announced that the operators had 'dishonored' the contract. A nation-wide coal strike began.

"On March 18, 1948, the Director of the Federal Mediation and Conciliation Service met separately with the operator trustee and the union trustee to explore the issues involved in the dispute.

"Since the neutral trustee had resigned on January 31, 1948, the operator trustee petitioned the United States District Court for the District of Columbia on March 20 for the appointment of a successor neutral trustee and for the disposition of any other matters that might arise in the dispute.

"The Interstate Commerce Commission ordered a 25 per cent reduction in coal-burning passenger train service on March 21.

"On March 22, 1948, the Director of the Federal Mediation and Conciliation Service proposed the appointment of a fact-finding board to a joint
[1448] meeting of union and operators' representatives.

"The next day, March 23, 1948, the union rejected the Director's proposal and the President of the United States issued Executive Order 9939 creating a Board of Inquiry under the national emergency provisions of the Labor-Management Relations Act, 1947. The Board consisted of Judge Sherman Minton, Chairman, Dr. George W. Taylor and Mark Ethridge.

"The Board of Inquiry held hearings in Washington D. C., on March 26, March 29 and March 30, and filed its report with the President of the United States on March 31, 1948.

"The report stated in part as follows:

"'Up to date, more than 35 million tons have been lost due to the stoppage. There is today approximately a 15-day overall supply of coal, but since coal is not evenly distributed there are places entirely out of coal today. Railroads have curtailed services and some carriers will be in dire straits within a week or two...

"'...We find the stoppage was not independent action by miners acting individually and separately.

Stoppage has precipitated a crisis in the industry and in the nation as a whole.'

"On April 3, 1948, the President of the United States requested the Attorney General to seek a
[1449] national emergency injunction, expressing the opinion that the strike, if permitted to continue, would imperil the national health and safety.

"That same date, the Justice Department obtained a temporary restraining order from the United States District Court for the District of Columbia. When compliance with the order was not forthcoming, the government moved for a citation for contempt of court. The union and its president were found guilty and fined a total of $1,420,000. This was subsequently upheld by the United States Court of Appeals for the District of Columbia, and the United States Supreme Court refused to grant a writ of certiorari. It was not until April 22, 1948, that most mines resumed operation.

"Meanwhile, on April 10, 1948, the management trustee and the union trustee agreed upon United States Senator Styles H. Bridges to be the neutral trustee of the fund. On April 11, 1948, Senator Bridges submitted a pension resolution which was adopted by a 2-1 vote of the trustees.

"Litigation to determine the propriety of the Bridges resolution was instituted by the management trustee in the United States District Court for the District of Columbia.

"Negotiations for a new contract were commenced on May 18, 1948, but could not be carried to a conclu-
sion until the pension issue was resolved.
[1450] After numerous negotiating sessions dealing with a great many issues, matters appeared

to be at a hopeless impasse on June 15, 1948.

"On that date, the Director of the Federal Mediation and Conciliation Service notified the parties to meet with him on June 17. Such meetings occurred both on June 17 and June 18. However, nothing was resolved, and the Director so reported to the President of the United States.

"On June 19, 1948, the President issued Executive Order 9970, creating a Board of Inquiry to report on the coal controversy by June 23. Those named to the Board were David L. Cole, Chairman, E. Wight Bakke, and Waldo E. Fisher. The operators testified before this Board on June 21.

"The next day, June 22, the District Court upheld the propriety of the Bridges resolution. Later in the day, both union and operator representatives appeared before the Board, stated that the Court decision had clarified the situation, and accepted the Board's suggestion that negotiations be resumed, with progress reports to be made to the Board. That night, and during the next two days, negotiating sessions were held. Substantial agreement on contract terms was reported to the Board of Inquiry late on June 24.

"On June 25, 1948, the National Bituminous Coal Wage Agreement of 1948 was executed; it provided for an increase of $1 per day in wages and an increase of 10 cents per ton in the fund payment, raising
[1451] it from 10 cents per ton to 20 cents per ton.

"The coal mines owned by various steel companies (commonly referred to along with other consumer-owned mines as 'captive' mines) were struck for seven days because of a dispute over the union shop issue. These companies filed unfair labor practice

charges and the General Counsel of the National Labor Relations Boards instituted injunction proceedings in the United States District Court for the District of Columbia. A stipulation providing for further processing of the litigation was agreed to by the parties and approved by the court. The steel companies then executed the agreement and the strike terminated. A trial examiner subsequently found that the union had committed an unfair labor practice. This finding was upheld by the Board and by the United States Court of Appeals. The United States Supreme refused to grant a writ of certiorari.

"The term of the 1948 agreement was marked by two national strikes and it was to be 20 months before another contract was to be executed.

"On March 11, 1949, the union declared a memorial period in which coal production east of the Mississippi was to cease from March 14 to March 28 in protest of the appointment of Dr. James Boyd to be Director of the U. S. Bureau of Mines. During this period about 62,700 railroad employees were laid off.

[1452] "From June 13, 1949, to June 20, 1949, the union, purporting to exercise its 'contractual options,' observed a 'stabilizing period of inaction.'

"In the meantime, negotiations for a new contract had been instituted. These negotiations were marked by controversy over the clause that permitted unrestricted 'memorial periods' and the clause that stated the contract covered the employment of the workmen only so long as they were 'able and willing.' When no agreement was reached prior to expiration of the contract, the union instituted a 3-day work week in the bituminous coal mines east of the Mississippi River. This continued until September 16, 1949, when it was

announced that the fund was forced to suspend the payment of pensions and other benefits. This precipitated an all-out national strike which continued until November 9, 1949, when the union ordered the men back to work until November 30, 1949.

"Thereafter, the national strike was resumed. On various dates around the turn of the year, the coal operators filed unfair labor practice charges against the union. The General Counsel of the National Labor Relations Board issued a complaint and instituted injunction proceedings in the United States District Court for the District of Columbia. An injunction was [1452] issued.

"The events of these months are best summarized by the report of the Board of Inquiry created by Executive Order 10106 issued by the President of the United States on February 6, 1950. Those named to the Board were David L. Cole, Chairman, W. Willard Wirtz and John T. Dunlop. Portions of this report are quoted hereafter:

"'On February 6, 1950, the President created this Board of Inquiry to report to him on the current labor dispute in the bituminous coal industry. Executive Order 10106, issued that day, directed the Board to present its report on or before February 13, 1950.

"'The critical importance of the bituminous coal industry in our national economy is widely understood and needs no elaboration here. Labor relations in this industry have attracted wide public attention in recent years. Two Boards of Inquiry, one in March and the other in June, 1948, have high-lighted for the public certain important aspects of these relationships.

"'The Operators are organized for collective bar-

gaining purposes and to three main groups. The first of these includes Northern and Western Commercial Operators located largely in the states north of the Ohio River, or West of the Mississippi. These Operators are represented by the National Bituminous Coal Wage Conference. Their production is approximately 55 per cent of the national total. The second group, also Commercial Operators, in the states
[1454] south of the Ohio, particularly in West Virginia, Kentucky and Tennessee, are represented by the Southern Coal Producers' Association. These operators account for a quarter of the national production. The last group, the so-called 'captive mines' are owned or managed by companies which consume their production, mainly in the steel industry.

"'United Mine Workers of America is the collective bargaining agent for the employees in all three groups. This union has had agreements with these operators for many years.

"'Negotiations for a new national agreement have been in progress intermittently for more than eight months. They have received considerable publicity. It was the most recent breakdown of these negotiations, followed by a wide-spread stoppage of work in the mines, which led to the creation of this Board of Inquiry...

"'The National Bituminous Wage Agreement of 1948, negotiated during the tenure of a Board of Inquiry, carried forward and modified the 1947 agreement. On April 21, 1949, the Southern Coal Producers' Association gave the union notice of termination effective at the expiration of the agreement on June 30, 1949. On May 13, 1949, the union gave notice of termination

covering coal mines operated by United States Steel Corporation and its subsidiaries, and on June 14, 1949, similar notices were served on all other signa-
[1455] tory companies.

"'Following these notices of termination of the 1948 agreement, a series of bargaining conferences were begun between the representatives of the United Mine Workers and the three principal groups of operators. The Southern Wage Conference, held at Bluefield, West Virginia, commenced on May 25, 1949; the 'Captive' Conference was begun on June 13, 1949, at Philadelphia; the Northern Conference convened at White Sulpher Springs, West Virginia, on June 22, 1949.

"'Southern Wage Conference met for a total of 44 days and was terminated by the Operators on November 2, 1949. The Southern Coal Producers' Association nontheless dispatched a telegram, dated November 25, 1949, offering to resume negotiations with the union. The union did not reply.

"'Negotiations between the union and representatives of certain captive mines were conducted at eleven meetings between June and the end of September in 1949. Thereafter informal conversations were held a number of times. These discussions were allowed to lapse with the understanding that either side might call the other by telephone and arrange further meetings.

"'The Northern Conference met a total of 27 days of sessions prior to October 21, 1949, when these negotiations were terminated by the Operators. They were resumed in February, 1950....
[1456] "'The Federal Mediation and Conciliation Service, which had been closely following all

these developments, arranged a conference among all the parties on October 7, 1949. A subsequent conference, called for November 9, 1949, failed to materialize when the representative of the union indicated he could not attend. On many other occasions the Director of the Service met with the parties in diligent effort to effectuate a settlement of this controversy.

"'Throughout the period of these negotiations there has been sporadic and unstable production. On June 8 the union ordered a 'brief stabilizing period of inaction,' and from June 13 to 20 little coal was mined. On September 5, 1949, the union placed into effect a 3-day work week. From September 19 to November 9 there was a general cessation of work in the mines. On December 5, the 3-day work week was again instituted. The Christmas holiday period and complete stoppages in Illinois and later in the Eastern District created further uncertainties regarding production.

"'In this period since the termination of the 1948 contract, there has been frequent resort to court actions and other legal proceedings affecting collective bargaining over the terms of a new agreement. This litigation has concerned the Welfare Fund, damage actions in state courts and charges of unfair labor practices before the National Labor Relations Board.

On January 18, 1950, General Counsel of the
[1457] National Labor Relations Board issued a complaint against the United Mine Workers and thereafter, on February 9, 1950, the United States District Court held that an injunction should be granted restraining the union from striking for the union shop, the so-called 'able and willing' clause and certain features of the United Mine Workers Pension and Welfare Fund.

"'This series of lawsuits has brought into question many provisions of the last agreement of the parties. In these proceedings there is further reflection of the breakdown of genuine collective bargaining in this industry....

"'On January 25, 1950, the Northern Operators wrote the union offering to negotiate a new contract 'on the basis' of a number of designated conditions. The union accepted the invitation, stating it would meet 'to negotiate in good faith, without stipulation, qualification, or commitment.' The negotiations which followed on February 1 and February 2, 1950, broke down without any effective bargaining as the parties debated 'conditions precedent to bargaining.' The Operators withdrew.

"'On January 31, 1950, President Truman sent telegrams to the parties proposing the resumption of 'normal' production for a period of 70 days and the establishment of a fact-finding board authorized to make recommendations. The Operators accepted the proposal, but on February 4 the United Mine
[1458] Workers rejected the proposal. The President appointed the President Board of Inquiry, under the Labor Management Relations Act, 1947, following the general stoppage of work on February 6, 1950.

"'The failure to resolve this dispute between the operators and the union by collective bargaining has resulted in a cessation of work in the mines producing the great bulk of the output of the coal industry. On January 25, 1950, prior to the current general stoppage of production, Dr. James Boyd, Director of the Bureau of Mines, reported that 'the situation is one of apprehension,' and further that 'unless there is an immediate

resumption of substantially increased coal production, the economy, health and welfare of the nation is now or soon will be imperiled.' At that time the Bureau of Mines estimated that coal stocks in the hands of all industrial consumers and retail dealers approximated 31,795,000 tons, or an average of 23 days' supply.

"'The current stoppage of work, commencing February 6, 1950, has further reduced coal stocks. The Bureau of Mines reported to this Board of Inquiry on February 9, 1950, that 'over-all stocks have declined to approximately 22,100,000 tons, which, based on an estimated daily consumption of 1,385,000 tons, represents a 16 days' supply in the hands of consumers.' The Bureau of Mines generally considered in the past anything less than an average of 30 days'
[1459] requirements as 'near the danger point to the national economy and welfare.' Under the 3-day week, the Bureau of Mines set this figure at 25 days. Current stocks are therefore nine days below this danger point.

"'The Interstate Commerce Commission has ordered the railroads, effective February 10, 1950, to reduce steam-passage train service operated on December 1, 1949, by 50 per cent and steam freight mileage by 25 per cent of that on February 8, 1950. By February 10, several states and localities had declared 'coal emergencies.'

"'The American people are entitled to a contract stabilizing wages and working conditions in the coal industry and to the coal they must have. There is no contract today. This need is not being met. This is essentially because the operators and the union have bargained with either too great emphasis on practical

advantage or too little confidence in their ability to reach an understanding. In other words, they have not allowed collective bargaining to function freely and effectively.

"'This dispute will eventually be settled by collective bargaining. Representatives of both sides accept and acknowledge this basic reality. There is no justification for exposing the country to the harassments and progressively greater dangers that will flow from further delay. A full opportunity has been afforded the operators and the union to work out their own
[1460] difficulties. A great interest has now intervened. The obligation entrusted to the operators and to the union, as the agent of the employees, to serve in a joint stewardship of these vital resources must be met. The health and safety of the nation demand this.'"

"On February 11, 1950, the President of the United States received the report of the Board and, expressing an opinion that the strike, if permitted to continue, would imperil the national health and safety, directed the Attorney General to seek to enjoin the continuance of the strike.

"The United States District Court for the District of Columbia issued a temporary restraining order. Following the granting of the order, the president of the union issued instructions for the union members to return to work. However, there was very little, if any, compliance with these instructions.

"The government moved for a citation for contempt of court against the union and its president. The proceedings resulted in a verdict of not guilty.

"Negotiating sessions continued with the Director of

the Federal Mediation and Conciliation Service and the Chairman of the Board of Inquiry in attendance.

"On March 30, 1950, the Interstate Commerce Commission ordered further cuts in train
[1461] service on coal-burning railroads, reducing freight traffic to 60 per cent of normal and passenger traffic to 35 per cent.

"On March 3, 1950, the President of the United States requested the Congress to pass legislation authorizing the seizure of the coal industry. A portion of his message to the Congress was as follows:"

Shall I read that?

MR. COMBS: Yes.

MR. ROWNTREE: (Reading) "'To the Congress of the United States:

"'I wish to report to the Congress on the emergency confronting the nation as a result of shortage of coal, and to recommend legislative action.

"'Since February 6, 1950, the production of bituminous coal has been dangerously curtailed. By now, stocks of coal are almost exhausted, and many parts of our country face crisis conditions. The anthracite coal which is being produced, and the trickle of soft coal output, together have been enough to stave off human suffering. But the lack of normal production of soft coal is bringing many basic industries to a halt.

"'A variety of emergency measures have been taken in recent days and weeks. Transportation and utility services have been cut down. Available supplies in many localities have been redistributed in order to meet the most urgent needs. Other steps
[1462] have been taken by states and cities, by industries and by suppliers, to conserve the

dwindling stocks of coal. These efforts have stretched our national stockpile, but they cannot add to it. Within a very few days we shall be virtually out of soft coal. The danger to the national health and safety is real and immediate. It requires action at once.'

"Two days later, on March 5, 1950, the operators and the union executed the National Bituminous Coal Wage Agreement of 1950. This agreement provided for an increase of 70 cents per day in wages and an increase of 10 cents per ton in the Welfare Fund contribution. The 'able and willing' clause was eliminated and memorial periods were limited to a total of ten days during the term of the agreement.

"Following this chaotic period of labor-management relations in the industry, the Bituminous Coal Operators' Association was formed on July 22, 1950, for the purpose of promoting 'stable, just and harmonious industrial relations' on a national basis.

"This Association representing for collective bargaining purposes approximating half of the tonnage of bituminous coal mined is composed of the following Regional Associations:

"Central Pennsylvania Coal Producers' Association.

"Illinois Coal Operators' Association.

[1463] "Indiana Coal Producers' Association.

"Northern Panhandle of West Virginia Coal Operators' Association.

"Northern West Virginia Coal Association.

"Ohio Coal Association.

"Virginia Coal Operators' Association.

"Western Pennsylvania Coal Operators' Association.

"In addition, the membership includes a number of individual companies. Among these are some of the

largest commercial coal companies and major steel companies which operate coal mines."

I think that's as far as we go in the book, is that correct?

MR. CHAMBLISS: You are on Page 276, the bottom of the page.

MR. ROWNTREE: On 276?

MR. CHAMBLISS: Two hundred seventy-six, down to where it says, "The reading of the deposition was continued." You stopped just a sentence or two before that.

MR. ROWNTREE: We will read that, if you desire.

MR. COMBS: Yes, I'd like to have that down to that exhibit because we need to complete the picture.

MR. ROWNTREE: All right. I stopped there and asked a question about this prior period but I would like to point out that we were reading beyond what [1464] was considered by the witness.

MR. COMBS: Yes, that is correct.

MR. ROWNTREE: (Reading)

"Q On December 21, 1950, the president of the union, Mr. John L. Lewis, instituted negotiations with the president of the association, Mr. Harry M. Moses, looking toward reopening of the contract.

"The ensuing negotiating sessions between Mr. Moses and Mr. Lewis resulted in the execution, on January 18, 1951, of an amended agreement effective February 1, 1951, negotiated without a national strike.

"This amended agreement provided for an increase of $1.60 per day in wages with no increase in the Welfare Fund payments. It further provided for a fixed term of one year with further indefinite continuation, subject to the serving of 60 days' written termination notice by either party.

"This agreement actually ran for a period of one year and eight months.

"On July 22, 1952, the union served a contract termination notice on the Bituminous Coal Operators' Association. Negotiating meetings between Mr. Moses and Mr. Lewis led to the negotiation of further amendments to the National Bituminous Coal Wage Agreement of 1950, providing for an increase of $1.90 per day in wages and 10 cents per ton in the payment to
[1465] the Welfare Fund.

"These amendments were also negotiated without a national strike.

"The amended agreement is for a firm period of one year with further indefinite continuation, subject to the serving of 60 days written termination notice. The agreement contains no 'able and willing' clause and memorial periods are limited to a total of ten days during the term of the agreement.

"The minimum term of the new amended agreement will insure a minimum of 43 months without a national strike in the bituminous coal industry, an unprecedented achievement in the labor-management relations of this industry.

"This achievement of uninterrupted production was attained by collective bargaining between management and labor without the necessity of the intervention of any branch of the Federal Government, Executive, Legislative or Judicial, without diminishing the supply of civilian or military goods or services.

"It is submitted that this constitutes a major contribution to the stabilization of the nation's economy."

(The reading of the deposition was continued.)

"Q Now, that covers the period before 1950, and we would like to take up later on in a little while, the period after 1950."

[1466] Over to the top of 277.

"Mr. Lewis, a principal duty that you had to perform as International President was to negotiate for collective bargaining contracts, is that not right?

"A I had general supervision over those negotiations under the constitution and the authority granted by the president's office."

MR. ROWNTREE: We go to Page 311 at the bottom.

(The reading of the deposition was continued.)

"Q Mr. Lewis, one of the principal issues in the 1950 negotiations was the question of stabilizing the industry?

"A The what?

"Q Stabilizing the industry.

"A I thought you said 'vaporizing'; pardon me.

"Q A problem arising from the fact that there was too much coal for the market. Do you recall that?

"A Oh, yes. That is a term frequently used—somewhat loosely but as a generic word.

"Q We refer here to Pages 296 and 297 of the 1948 convention. A statement by President Lewis at the 1948 convention.

"I would like for you to read particularly the first paragraph under your name there, the name of President Lewis. The first paragraph and also

[1467] the paragraph starting at the bottom of Page 296. These two paragraphs. And also the second full paragraph on Page 297."

MR. CHAMBLISS: Do you want me to read Mr. Lewis?

MR. ROWNTREE: I quote here and I am going to read these paragraphs to which I referred at that time, this is the 1948 convention minutes.

MR. COMBS: Which is Exhibit 132.

MR. ROWNTREE: Exhibit 132.

"President Lewis: May the Chair say this in relation to the general subject matter: The productive capacity of our coal industry exceeds at any normal time the consuming capacity of our markets. For many long years the coal industry was developed to a degree that the work-time of industry was intermittent, and in the majority of coal-producing states was almost chronically under 200 days per year work-time opportunities. A comparatively small number of special-purpose company mines, producing special-purpose coal, were able to work almost full time. Yet there were times when extraordinary conditions—world demand, wars and rumors of wars—made more demand for the product and when we oftentimes found that an inadequate car supply prevailed and men in specialized areas on special rates were deprived of a reasonable opportunity for work participation."

"The Mine Workers had a bitter experience in that matter and we have taken——

[1468] MR. COMBS: (Interposing) May I call attention in the transcript of the record to the Court that he has skipped a paragraph in that statement there and I could rest your voice if you would like for me to read that paragraph.

MR. ROWNTREE: Go right ahead.

MR. COMBS: Is that permissible?

MR. ROWNTREE: If you want me to read it?

MR. COMBS: No, I will read it. Is that all right

with the Court?

The paragraph skipped said this:

"The question of work opportunity has been an acute one in our industry for many years, both in the anthracite and the bituminous fields. It comes foremost to out attention right now because, with the decline in export coal, with the lessened consumption of our markets, we find that the productive capacity of our mines at the present time exceeds the requirements of our domestic markets. We had similar conditions in the 20's, and as a result the industry was forced into a war of attrition. The coal operators, unable to sell their coal at a price whereby they could pay the scale, would close their mines for an indefinite period, and when our people were starved into submission locally, they would undertake to operate their mines non-union at a lower wage scale. This in turn would create a necessity for other operators doing the same thing and reducing it to even lower scales.

[1469] There was no resistance whatsoever from the coal companies, each operator being desperately inclined to work his own mine and pay whatever miserable pittance he could have accepted through these starvation policies."

MR. ROWNTREE: Continuing the quotation:

"The Mine Workers had a bitter experience in that matter and we have taken some profit from it. In the anthracite industry we made it an issue, and due solely to pressure from our organization and the policies which we suggested we were finally able in the anthracite region, covering Districts 1, 7 and 9, to put into effect a joint commission consisting of representatives of the operators, representatives of the three districts

of the United Mine Workers, and representatives of the State of Pennsylvania, to allocate the worktime for the anthracite industry, so that such worktime as was available would be shared by all of our members in as substantially equitable a manner as could be made effective. This arrangement has proven to be a great stabilizing influence in the anthracite industry. Its maximum of efficiency has not yet been demonstrated because of the existence of a World War and the fact that the industry has been taxed to supply more and more coal."

Now I skip another paragraph.

MR. COMBS: "But already there are signs of diminishing demand in the anthracite as well as in the bituminous regions, and there are signs that
[1470] competition will again be apparent in that industry, cutting prices, which in turn will induce them to ask for a lower wage scale. So far as your officers are concerned we are not going to go through that process again. We have not yet been able to work out with the bituminous operators any kind of a nationally stabilized arrangement, simply because there is no national leadership in the bituminous industry. They have sectional group leaders, each one thoroughly lacking confidence in the other, and it is impossible for the Mine Workers to find any stable agency on the side of the bituminous operators with whom we can discuss a national program, however conducive it would be to the welfare of the industry, both on the investment side and on the side of the Mine Workers."

MR. ROWNTREE: "I merely want to say this in connection with this matter. When this market condition comes to a point in the bituminous industry that

it threatens the stability of our contract and the working conditions of our people, when the disparity of employment gets to a point where it constitutes a rank in justice and lack of opportunity for our members to work, the United Mine Workers of America itself may find it necessary to advise our members how many days a week they need to work. We have that contractural right, because the contracts are written to permit that. It is a matter of self-preservation for
[1471] our Mine Workers; it is a matter of self-preservation for the investors in the industry. If the operators of this country can't give any leadership upon the commercial side of this industry, the United Mine Workers of America can and will."

"So next year, in 1949 or at any other time, when evil days come upon this industry, you will find the United Mine Workers of America moving in, and if there are only three days' work in this industry we will all have the three days' work. These things are of the utmost importance. Conditions are not now as they were in the old days. Years ago our contracts were staggered and they expired at different times. Large segments of the industry were not organized and the men had to work under inhuman conditions."

MR. COMBS: There is a little bit more to that, just a short bit.

MR. ROWNTREE: All right.

MR. COMBS: "But the Mine Workers have redeemed this industry economically. There was a long period of years when the coal operators were not able to make any money and pay any dividends to their stockholders, and they were not able to pay any taxes to the government. But the United Mine Workers have helped to

stabilize this industry. It urged the enactment in Congress of the Guffey Coal Stabilization Act, which had but one object, namely, to prohibit the coal operators from selling coal below the cost of pro-
[1472] duction, which they had constantly been doing and then asking for wage reductions.

"So if needs must, the Mine Workers are prepared to move into that field of stabilization of this industry, and if we are going to starve in this industry at any time we will just all starve together."

I might point out to the Court that the remarks of President Lewis that he was reading and referred to were made in connection with a resolution before the convention at which the discussion was opened concerning the division of work, worktime among the coal miners.

MR. ROWNTREE: Yes, sir. I asked the witness then:

(The reading of the deposition was continued.)

"Q Do you recall this statement?

"A Oh, yes, and I may say that those observations merely relate to one thing: The equitable distribution of work opportunity in the coal industry and the desire of the United Mine Workers to have the work opportunity more equitably distributed. It had nothing to do with any other subject.

"Q And in 1949 and '50, during the period that the negotiations for the 1950 contract were going on, you did set 3-day work-weeks in the industry?

"A We set a 3-day work-week, yes, to distribute the work and the opportunity for work; and
[1473] for no other reason.

MR. ROWNTREE: "This is a statement

by Mr. Lewis, June 23, 1949, to the joint conference that was in session at that time of the new contract after the termination of the 1948 contract."

This is the joint conference on negotiations of 1949.

MR. COMBS: As contained in Exhibit 133.

THE COURT: This is in which exhibit?

MR. COMBS: Exhibit 133, 1952 Convention Proceedings.

* * *

[1474] MR. ROWNTREE: I referred Mr. Lewis this morning, well I referred at this point in the record to certain paragraphs of a statement by Mr. John L. Lewis, at a joint conference June 23, 1949. The statement as we read before was a 1948 statement. This is a statement at a joint conference of the bargaining parties June 23, 1949. I did not desire to read into the whole record the whole statement, but counsel does request that I read the whole statement.

I would like to point out the paragraphs that we referred to.

THE COURT: All right. What are you reading from?

MR. ROWNTREE: This is the convention minutes of 1952, Exhibit 133, page 96.

[1475] MR. COMBS: I think this is important, your Honor, because it's background information is the reason I requested this.

MR. ROWNTREE: "We have before us the task of working out a successor agreement. We have no formal set of demands, we have no demands of any character. We would like to discuss with you in the conference all of the matters germane to the making of a new agreement,

based upon the uniform and consistent policy of the organization and its members throughout the years that they had the proper right of participating in the constantly increasing productive efficiency in the industry, taking into account the interests of all parties, basing the degree of their participation upon what can be worked out contractually within these negotiations.

"We meet a time when the industry had had a number of years of reasonable prosperity, taking the industry as a whole. We are very glad that the industry has had reasonable earnings. The past eight- or ten-year period has, we think, been in many ways the most profitable. In the industry of the American coal industry. I give credit to the industry for making such prosperity possible and think that everyone around this table has made a contribution. I believe that the men who mine the coal have made their contribution by working longer hours during this period, so feel they're entitled to a participation.

[1476] "I am disappointed at the degree of public reaction to the accomplishment that has been made in the past years. This fact, I think, is due in some degree to our own shortcomings and to constant caviling in our own ranks which, I believe, of course, is nothing but a part of the bargaining in the market place which has been going on since time first was. I think that is a part of the rule of free enterprise. I think it's over-emphasized at times in its importance. We have a highly competitive industry with its certain rather difficult problems. I don't think those problems are very well understood by the public at large, both on the mine workers' side and on the operators' side.

"It has become popular to criticize an honest mine

worker in public. It hasn't yet become popular to criticize the operators in public. Publicly, they let the coal operators alone while they are criticizing the mine workers. I think some of those conditions are due to our own shortcomings, and I don't suppose a revolution or anything will occur, because we are all intensely occupied with the problems of today and not many of us have the time or opportunity to plan constructively or devote too much time to the long-term problems of tomorrow. We do the objective at hand and the problems of tomorrow and next year will adjust themselves by the men who carry the responsibilities.

In spite of all these factors; in spite of the
[1477] period of intense strain, the industry has during this period improved its own position and the mutual profit has been greater than at any other time in the industry.

"So it comes that we now have to take into consideration the problems of our economy and our industry, plan our affairs so that, if possible, we can continue to prosper. The question of wages and hours becomes germane to the negotiations at this conference. Obviously the miners would like to have a reduction in the hours of work. The question of export and foreign markets is an unknown quantity. There comes up at this conference, we think, "

This is a part of the text referred to at the time.

"There comes up at this conference, we think, the question of some regulation of the working time, some stabilization in the industry. The Mine Workers have gazed at some degree with admitted apprehension at the tendency of the industry to reduce their prices in the face of increasing competition. Frankly, we think

the industry has been too hasty.

"There arises today much apprehension about the future economy of our country, but nothing has happened to the country's economy that would justify serious apprehension. Our basic industry remains unimpaired in any vital way. There are ample reasons to believe that with the coming of the harvest and the
[1478] coming of the future trade, and after the end of the negotiations in the steel industry, that there will be a substantial production. I think there is a synthetic impression being encouraged in the steel industry to improve the bargaining power of the companies in the existent negotiations in the steel industry. It hasn't been very long that the production volume of steel has been up. There is no question about the fact that some of the steel furnaces are being laid idle under conditions that would be more favorable to the company.

"It is the position of the coal miners that there is no reason for the operators to have unfounded concern in this year, 1949, that is whether or not the production of 540 million, 500 million, or 450 million. The producers of that coal are entitled to a profit on their investment for the production of that coal and the mine workers are entitled to a proper wage and to proper working conditions. We have never believed that because slower operations existed in the industry that the industry can throw up its hands in despair and sell its coal below cost. We think basically that the investor is entitled to a return. We think basically that the men who operate the mines are entitled to a participation to protect their living standards whether the production is large or small. We have no desire to agitate for government interference in the industry. Quite the contrary, yet you see the oil industry under
[1479] agreement to regulate production, more or

less voluntarily, by and with the cooperation of several states.

"There has been much talk lately about a stabilization plan, much of it is affecting the mine workers and the operators. It has no basis of fact and cannot be considered practicable. It is true, however, that we do have a segment of the coal industry operating under a plan that brings about a distribution of working opportunity (Mr. Lewis then explained the plan that had been worked out in the anthracite industry). We would like to talk to you in this conference on some improvements and stabilization which is a question of magnitude in the minds of the men as affecting the investment in the industry. We would rather deal with you when you are opulent rather than when you are poor. We like to negotiate with you when you are full, when you are satisfied, when you can pay your board at first-class establishments, and we can, too.

"We would like to have time to discuss with you in this conference the various working conditions in the country; negotiate with you any suggestions we make. We have no arbitrary position on anything. We think it's going to be incumbent on this conference to appropriate enough money to carry out the contractual objectives of the Welfare Fund, in the same respect that Congress does after it passes a bill carrying public policy. It later has to pass appropriation
[1480] bills in order to implement that policy. That is the way with the Welfare Fund. The purposes and objectives of the Welfare Fund are set down; the income is insufficient to carry out those objectives, and we think it is up to the conference to appropriate enough money to carry them out. It is of paramount importance because it affects the human equations of

the industry.

"There are a number of things in the agreement affecting working conditions and joint relationship which we think ought to be improved. We think there ought to be set forth in the contract, in principle, a definite rule for the industry to follow on seniority and the reduction of manpower; because that is going to be a question that is germane for attention in the industry as we go forward. The manpower of the industry is going to decline for the reason we all understand. The productivity of the industry is going to increase. It is increasing, and I see no reason to believe that it will stop increasing for an indefinite period. The labor cost per ton is declining and will continue to decline. (Mr. Lewis then compared the production of coal during World War I with World War II in relation to the number of men employed in the industry, indicating the increased productivity of the miner at this time.)

"So, gentlemen, we want to set these things before you. Now, we get down to another point of
[1481] discussion which has a collateral impact upon this entire matter but is not, however, a part of this monologue of mine. I get down to the time to do it. We have a contract with you gentlemen that we all signed last year in which says the contract expires by limitation on June 30. When we made the agreement, that is when we thought it would expire; and on this date that is when we think it expires because we said it would, and we put our John Hancock on it. We think the contract expires on the 30th of June. At that point if you were inclined to say, 'Why didn't you initiate the conference in order to give us time to discuss these matters instead of at a later date?' And I would say, 'Why didn't you?'

"Now, there may be some of us, not on this side, who would say, 'We have a contract until August 14.' And at that point I would say, if they said that, 'With whom?' 'With whom is your contract after June 30?' And if you insisted that you have a contract with somebody after June 30 and identify him, and assuredly it wouldn't be the United Mine Workers, you would want to negotiate with that party to formulate a contract before August 14.

"What are we going to do about it? We assume that you prefer to have time to negotiate our successor contract, and at the same time, if possible, have your mines in operation. We assume that if you would like to work your mine during the time we are negotiating that you would in all likelihood expect
[1482] to work them on a retroactive basis—that practice is now known in the industry. At this point, I will pause and say that if you have any suggestions on this, we would be glad to consider those suggestions you might want to initiate; and, at the moment, we are only making that statement to the tonnage represented in this conference. We have not made such statements to any other conference and I have attended two to date, and I have no plan to do so until I can see what is in the minds of you gentlemen and you have time to reflect and time to decide what you might be willing to do in your great opulence and prosperity.

"We don't know what time you have to discuss these matters. We are perfectly willing to give you any time you wish so to do. Please understand me correctly. You are not expected to make any offer to work pending negotiations which is not on a retroactive basis. We

are suggesting that we might under certain conditions be willing to meet the limited requirements of the industry in a rational way under some arrangement that will take the stress and strains out of the question as far as industry is concerned and the public is concerned.

"Don't get the idea from the way we are talking that this is because of the Taft-Hartley Act. That situation is being dealt with at the moment, most futilely it seems at this time, and in a manner not pleasing even [1483] to Congress. We have an idea that Taft-Hartley will be repealed, but we don't put a date on it. We just don't think it will stay in America. The Mine Workers are not for the amendments to the Taft-Hartley Act in the hope it will be only repealed in part, that the operators could go just too far in running to government for relief by injunction; that when we have to deal with the government under duress, why do we have to deal with the coal operators at all? We are against government ownership of coal mines. We think that it would be a bad thing for America. (Mr. Lewis then recalls the results of government operation of the coal mines in Britain.)

"So anything I have said today is based upon the desire of my associations and myself to work out the problems in the American way."

I would like to point out to the Court he referred to the paragraph there that connects up this conference we think with the question of some regulation of the working time, some stabilization in the industry, "The mine workers have gazed at some degree with admitted apprehension at the tendency of the industry to reduce their prices in the face of increasing competition.

Frankly, we think the industry has been too hasty."

And he referred to this insistence, "It is true, however, that we do have a segment of the coal industry operating under a plan that brings about a dis-
[1484] tribution of working opportunity. (Mr. Lewis then explained the plan that had been worked out in the anthracite industry.) We would like to talk to you in this conference on some improvements and stabilization which is a question of magnitude in the minds of the men as affecting the investment in the industry."

At the top of page 316.

(The reading of the deposition was continued.)

"Q Mr. Lewis, do you recall this statement apparently made June 23, 1949, in the joint conference?

"A Yes.

"Q Did not the operators' representatives protest your effort to set the working time in the industry?

"A Yes. As I recall, they did.

"MR. ROWNTREE: We here refer to specific objections and statements at page 81 of the 1952 convention, also page 84 of the 1952 convention and the statement of the Southern Coal Producers Association, page 48, 1952. We won't read those.

"They were not interested, Mr. Lewis, in letting the industry work a 3-day work-week. These operators' representatives were not interested in a 3-day work-week in the industry?

"A No. As I recall, they protested.

"Q We have been talking about issues
[1485] in these 1950 negotiations and there were many days of short work-weeks and many periods of time of no work during these negotiations, is that right?

"A It varied with different companies, and the Mine Workers were interested in equality of opportunity for employment. That was the sole consideration.

"We do not and have not sought any privilege in management or in the coal industry beyond the production problems. The United Mine Workers of America do not follow through the coal to the market. They are interested in volume and not in prices. We have always recognized the right of the operators to make the prices in accordance with their judgment but have sometimes doubted the soundness of their judgment, and we thought at times it was done to be able to pull a poor mouth in the wage negotiations and secure a contract for lesser wages than might have been the case, by pleading poverty.

"In addition to that, there are some coal companies owned by outside interests who are perfectly willing to put their coal companies in the red for the tax advantage and equalizing on other holdings they might have in industry. That is certainly true to a marked degree in certain instances.

"But the Mine Workers were interested only in quality of work opportunity. We wanted to get away from the feast-and-famine thing to a certain degree.

[1486] Excessive production in times of stress or market improvement—demand, and no work at all under some circumstances."

MR. ROWNTREE: Now, if your Honor please, I would like to insert a United Mine Workers Journal article, which appeared at this period of time and which was not in this transcript. This is the United Mine Workers Journal edition of June 15, 1949, page 8, the editorial reading, "UMWA," this is June 15, 1949. "UMWA once again assumes aggressive to save the

coal industry from itself.

"Far from a desire to loaf and idle their time away, and suffer the economic consequences of denying to themselves and their families the necessities of life that steady earnings would provide—coal miners would welcome continuous employment which would enable them to produce between 12 to 13 million tons of bituminous a week, as well as a normal anthracite supply.

"The recession in general business and resulting decreased coal consumption, plus a 75-million-ton inventory above ground, has forced the miners into idleness in an effort to maintain some semblance of stabilization in the industry. Continuous operation would permit the big companies to hog the market—— such as has already happened in ship-building and other varied industries.

"The purpose of the shutdown, as President Lewis stated, is——:

[1487] "'To protect the human and property values inherent in the coal industry.'

"This means maintenance of stabilization as far as possible to equalize the equities of work opportunities.

"Since the coal industry, of its own accord, cannot get together and exhibit the business acumen necessary to protect its employees and the business and population of the mining communities, the duty of performing this public service devolves on the only stabilizing force the industry has ever known—the UMWA.

"If the greed of the big companies is allowed to run rampant, another period of cut-throat competition will ensue which will once again impoverish coal miners and mining communities, as well as bankrupt the coal

companies.

"A divide-the-orders, share-the-work program must prevail in bituminous coal during the recession period—which by all the odds should not last too long—if the industry is to survive.

"Of course, the stabilization work stoppage inaugurated by the UMWA will be censured by editorial writers and commentators who follow NAM policies, and the ordered stoppage charged up to and embellished as high-handedness on the part of John L. Lewis. But regardless of all such false accusations, the fundamental fact remains that the UMWA is taking the only practical course available to maintain a semblance of economic stability of jobs, investment and production capacity in the industry."

[1488]

* * *

"Q Finally, the supply of coal in the country in 1950 ran exceedingly short before the 1950 contract was finally signed, did it not?

"A I don't agree with your words. I agree that the storage was used up to some degree but not in any sense that it created apprehension and danger.

"Q Well, would you say, Mr. Lewis, that the country was experiencing difficulties and dangers because of shortage of coal in that period?

"A No. I would say that the threat of possible shortage of coal might have caused some apprehension among nervous citizens, and the whole theory of stoppage of production in an industry is an unpleasant concept for the average citizen to face. He would like for a normal condition to prevail.

[1489]

"Q Particularly a basic industry like coal?

"A Quite so. But we have so many industries now that are on an equal basis. We couldn't do without any of them.

"Q Coal remains the fundamental, basic industry?

"A Yes, but food comes before that, and shelter, and transportation, before the coal can be gotten to these places.

"Q It goes around in a circle, in other words?

"A It is all interdependent. It is a marvelous, complicated economy we have erected here.

"Q Mr. Lewis, that brings us to the signing of the 1950 contract.

It is our contention that this is the point where the conspiracy was formed that we allege in this case.

"You had been negotiating with Mr. Love, Mr. Moses, these various representatives of the operators over a period of many months, and you knew them very well, I take it? You knew their companies and their respective positions in the industry, of these various companies represented by Mr. Love and Mr. Moses?

[1490] "A At that point let me intervene, if you please.

"Q Yes, sir.

"A They were representatives of the industry. It was not only their units of production that were concerned, and while I know a great deal, I think, concerning their problems as minor producers of coal, I knew equally as much about all the principal units in the country. That was my business. It didn't make any difference where a man came from; if he operated a sizeable mine, we had certain information on it, factual information that would run to questions of our interests. We knew what his bank was, we knew what his capitalization was. We knew what his dividends were, if he had any. We

We knew the banks that he was in debt to; the banks that could influence him. The companies that he sold to. The problems of mining. The different irregularities and the natural conditions that made for a higher or lower cost of production. The quality of the coal. The efficiency of his preparation of it for the market. We know that about all of the companies.

"So in that respect I knew no more about Mr. George Love's plant than I did about anybody else's plant.

"Q Mr. Lewis, we refer to the 1952 convention minutes, page 72 through 81. A statement by you at White Sulphur Springs, October 16, 1949, wherein you described the relationships of certain individuals to certain companies.

[1491] "These statements were made as statements of true fact by you, I take it, with full belief that they were true statements?

"A I failed to catch the last three words.

"Q I mean this statement made by you on these pages, you believed to be true at that time, and you still believe them to be true?

"A That is characteristic of all my utterances.

"Q Yes, sir. This is your conclusion as to the place that these various companies, referred to here, filled in the bituminous coal industry?

"A If you will pause just a moment.

"Q Yes, sir.

"A I am trying to identify to whom this statement was made.

"Q All right sir.

"A Do you have it? What date did you say?

"Q October 13, 1949.

"A Yes, but to whom was it made? Was it an address to the conference? Was it a public interview?

"Q I would say it is a public interview, from the contents.

"A I would assume from a cursory examination of this, that in an address to a joint conference, of the Appalachian Joint Conference, and that present [1492] were all the negotiating operators and all the representatives of the United Mine Workers, a considerable number. And I reasonably conclude that it is an accurate transcript of what I said.

"Q Yes, sir.

"A Without knowing.

"MR. ROWNTREE: At this point, we read the statement made on October 13, 1949, page 72, and parts of the next four pages starting at the second sentence in the last paragraph on page 72.

"'The so-called captive mine companies owned by steel companies have an annual production of about 52 million tons—the coal mined by the wholly-owned subsidiary corporations of operating steel companies. In addition to mining that coal, the same steel companies buy an enormous tonnage of coal from commercial producers, which forms an inportant item in total business volume for an operating year. The captive mine production, together with the production of the Pittsburgh Consolidation Coal Company, which is the largest so-called commercial coal producer with several other companies closely allied to them in financial structure, sales, and operating arrangements, amounts to about 100 million tons.

"'There is another group similarly, though, more remotely controlled, in the South, which heads up with

the tonnage of the Island Creek Coal Company, the Pocahontas Fuel Company and certain others,
[1493] which operates through the Southern Coal Producers' Association.

"'The Southern Coal Producers' Association is a holding association composed of about 14 regional associations. And in negotiating with the Southern Coal Producers' Association, we are one move further from the operating coal companies. They first hide behind their regional association and secondly, hide behind the Southern Coal Producers' Association.

"'The Southern Coal Producers' Association, however, is a false front for the Appalachian Coal, Incorporated, which is a sales organization which levies a brokerage rate on about 40 to about 45 million tons of annual production, making sales contracts for the entire volume for a mine or a company and charging a percentage commission for the handling of that tonnage.

"'The interests of the Island Creek Coal Company which controls the Appalachian Coal, Inc., therefore, have vast influence with any companies that sell coal through that organization and it would be economically and to some degree financially disastrous for those companies, members of the Southern Coal Producers' Association, to take any other attitude than the attitude taken with respect to wage contracts by the Island Creek Coal which dominates Appalachian Coal, Inc.

"'Therefore, another set of controls is set
[1494] up which affects about an additional ninety to a hundred million tons of production. The Island Creek Coal is controlled by the Cleveland Trust, the family trust for which that company is trustee.

And Mr. Isadore Freiberger, the chairman of the Cleveland Trust, member of the board of directors of Island Creek, Pond Creek, representing the estate which controls the company with a completely free hand, can dictate the policies of the Island Creek Coal. He is doing it in association with and in cooperation with the major financial groups in the steel industry who are seeking to avoid the necessity of establishing a contributory pension plan and welfare arrangement in the steel industry.

"'That amounts to about 200 million tons of the nation's so-called 500 million or more national bituminous production.

"'In addition to that, there are certain groups of companies operating in the industry, like the corporate concern owned by the Koppers Company which mines about 14 million tons a year, completely dominated by the Mellon financial interests.

"'In addition, there are a great number of captive mines, not ordinarily covered by that terminology, which are wholly-owned subsidiaries of commercial manufacturing companies and which furnish coal to those companies—automobile companies and other concerns of a miscellaneous nature. They

[1495] are captive mines except they are not ordinarily included in that terminology when it is used to describe certain types of mines.

"'These interests are in association with the interests that are in the steel industry and have taken this stand against pensions and welfare in the contract in the steel industry. These interests include all the companies interested in steel. They include the representation on their board of directors from various

industries, such as Mr. Walter Gifford, representing the empire and all the employees of the American Telephone and Telegraph Company as he sits on the board of the United States Steel; Mr. Sewell Avery, representing the Great Gypsum Company and Montgomery-Ward and other interests as he sits there, and the representatives of the great major insurance companies which have large investments in industrial enterprises and have representation on these boards.

"'So, we have a combination of powerful financial leaders, not necessarily great in number but tremendously influential in the magnitude of their financial representation. That includes practically all the major automobile companies, with the exception of Ford. It includes practically all of the steel industry. It includes the insurance companies. It includes the DuPont family and their great investments—their holdings, of course,

of 23 percent of the stock of General Motors

[1496] which is controlled for all practical purposes.

It includes the Mellon empire and their banks. And taken together makes a tremendous group of immense power who apparently have decided to make this struggle in steel, final and significant in American economic history.'

"Dropping to the third from the bottom, fourth paragraph.

"'The struggle is on in the steel industry. Now it is obvious that steel industry, financially interested in many coal mines, would be disinclined while this trouble is on to permit a contract to be negotiated in the mining industry that would reaffirm the principles embodied in the welfare and pension plans in contract in extense for its operation. They, of course, recognize that even-

tually they will have to make that form of contract in the coal industry. But they wish to postpone the day.

"'So, it is just as simple as Mr. Benjamin Fairless, President of the United States Steel, saying to Mr. George Humphrey, head of M. A. Hannah, which owns 38 percent of the stock of Pittsburgh Consolidation Coal: "Do not let George Love, as chairman of the operators' negotiating committee at White Sulphur, make a contract that will embody a welfare clause." It's just that simple. It's just that effective. And it operates just that way.

[1497] "'So Mr. Love in his unique position of representing definitely and primarily these great combined interests which I have described in the coal industry, is in the position of being the actual as well as the titular leader and spokesman of the coal operators of the country due to circumstances and competitiver relationships in the industry.

"'For instance, no commercial coal operator as yet in the country, whether he is west of the Mississippi River or east of the Mississippi River, south of Mason-Dixon Line—if he is in the business of producing commercial coal—would hazard his business future by undertaking to disagree with the leadership furnished the industry now by the United States Steel through Mr. George Love and Mr. Harry Moses, who is on the outside but is adviser and counselor of Mr. Love. No operator would dare hazard his commercial and business future.

"'In the first place, he dare not make an agreement with any expectation of remaining in the business of producing coal unless he knows what his competitor will pay in the form of a wage structure. In the second

place, if he wishes to sell his coal in the open market and sell some of it to these industries which I have described, he cannot offend them by undertaking to go contrary to their wishes on wage negotiation policies.

[1498] "'In addition to that, he dare not commercially offend the financial influences exercised through the great banks wherein the interests described are dominant. I refer to banks like the Mellon Bank in Pittsburgh, a billion-dollar concern. George Love is a director in that bank and sits in the holy of holies in discussion of these policies. I refer to banks like the Continental Illinois in Chicago, the great New York banks where the steel corporations, motor industry and all of these allied industries have literally billions of dollars of deposits which can be shifted about at will to the detriment of the banker or to the detriment of the banker's customer who doesn't act in an orthodox manner from their standpoint.

"'Therefore, there has been no progress in the coal negotiations. And, therefore, it is a reasonable expectation that there will be no progress until the road-block which they have set up has been removed by the same forces which set it up.

"'They have elected to fight this out and create this crisis and there is nothing that labor can do either in the coal industry or the steel industry than to await their pleasure.'"

We skip to the first full paragraph on page 56:

"'Mr. Love is a hired man for the M. A. Hannah interests. He runs the Pittsburgh Coal for them.'

[1499] I might say, Your Honor, Pittsburgh Coal is presently Consolidation Coal Company.

"'He carried out their orders. He takes instructions

from George Humphrey. George Humphrey is a partner in the steel industry with Ernie Weir of National Steel. He sits in the steel conferences. He prides himself on being primarily a steel man and not a coal man.'

"In the middle of page 77:

"'It is impossible that the southern operators can see that they will be successful in having the mine workers go to work in the mines again without a welfare fund. But they use it for the same reason—to create an impasse and a deadlock until their financial sponsors and their industrial customers advise them that it is no longer necessary to protect the steel industry by tying up the coal industry.'"

MR. COMBS: May I observe to the Court at this time that this statement was taken from the statement of President Lewis at White Sulphur Springs, West Virginia, on October 13, 1949. This statement was extemperaneous. It contained some nine-and-a-half pages and counsel has read parts, and we make reference to the full statement, which is contained in Exhibit No. 133, commencing on page 72 and ending on page 82. We don't desire to read that, but we do desire to make reference to that.

THE COURT: Are you returning now to the transcript?

[1500] MR. ROWNTREE: That's right. We referred Mr. Lewis to this language.

(The reading of the deposition was continued.)

"'So it is just as simple as Mr. Benjamin Fairless, president of the United States Steel, saying to Mr. George Humphrey, head of M. A. Hannah, which owns 38 percent of the stock of Pittsburgh Consolidation Coal,

"Do not let George Love, as chairman of the operators' negotiating committee at White Sulphur, make a contract that will embody a welfare clause." It is just that simple. It is just that effective and it operates just that way.'

"Mr. Lewis, if these men could tie up the industry against the union, it would be just as easy for them to tie it up with the union.

"A I would say that is purely an assumption. The question is predicated upon an assumption which has no bearing and is not germane to the subject matter. I see no reason to quibble about words.

"Q Now, one of the things that occurred after the 1950 contract is reflected in the United Mine Workers Journal, September 1, 1950, page No. 5. I show you a copy of it."

MR. ROWNTREE: Go to 386. We decided to skip that last questions which I quoted. Go to 386.

(The reading of the deposition was continued.)

"Q In the 1949 and 1950 negotiations,
[1501] there existed the setting of 3-day work-weeks and other limitations of the number of working days by the union?

"A Yes. The 3-day work-week was promulgated.

"Q And the operators objected to that?

"A Yes, they objected.

"Let me amplify that a little:

"We were asked by the government representatives and by the operators to have the mines resume work while we continued negotiating, in order to alleviate what they said was the hazard that the public was enduring or running out of coal and to insure against it.

"Now, the operators made a great point that the

public was in danger. Through their public relations organizations they widely circulated that point of view, and it received wide publicity in the nation.

"We consented to go back to work without a contract, while we negotiated; but, as the consenting party, we stipulated that it would be a 3-days-a-week operation, which would remove all vestiges of apprehension for coal throughout the country and take the headlines off the newspapers and abate the widespread publicity on the question of a theoretical shortage of coal.

"They then objected to the 3-day week on the ground that it didn't let them work five days a week if they could work five days a week.

[1502] "The intent of the Mine Workers was to widen the opportunity for equal employment opportunity in the industry of all men who had been engaged in the strike and were members of the union and to give them equal participation in the work available.

"We were well advised, of course, through out knowledge of the industry, that the industry could not expect to work more than an average of three days a week.

"So that is the Alpha and Omega of that question.

"Q Did Mr. Moody ever talk to you about your proposal with respect to a limited work-week, the control plan to stabilize the industry?

"A I do not recall that he ever talked to me personally on the question, but he made the Welkin ring in the newspapers.

"Q Did he ever talk to you and express the idea that he could not go along with the stabilization plan based upon a controlled number of days' work because

of the anti-trust laws?

"A I do not recall any personal conversation with Mr. Moody on that subject, but certainly I knew from the public press that he held those views when his organization met, and he made this address—these remarks. And I considered it of little moment—his utterance.

"Q Did the operators object to the limited [1503] work-week because of economic reasons? Or what was the basis?

"A No. Their first concern—the position that they had occupied all through the negotiations was that they were mindful of the public weal and the public welfare.

"Their reaction when the 3-day work-week was promulgated, was that we were interfering with their right to make profits as investors under our free enterprise system.

"They changed their position completely. In other words, they were smoked out of their hole.

"Q They were really hurt in their pocketbook?

"A Their purse. We thought, 'Who steals my purse steals trash.'

"Q Now, the 1950 contract, as signed, contained no provision with respect to a limited workweek?

"A As I have previously testified, that came about on a request to put the mines back in operation to abate a theoretical hazard, a shortage of coal for the industry and for household use in the nation. That is the only time that came up prior to the promulgation of the 3-days arrangement.

"But we were asked to do the country a favor—which was likewise a favor to the operators—by working

without an agreement. So we named that as one of the considerations under which we would work. And the wails and lamentations were of course then heard from every high hill because it touched on a vital spot: their left hip pocket.

[1504] "Now we refer to page 125 of the convention minutes of 1952, a statement of Mr. George Love, where Mr. Love states:

"'This two-and-one-half-year contract gives the industry its first real opportunity for stability in the last decade.'

* * *

"Q The second sentence: 'This two-and-one-half-years contract gives the industry its first real opportunity for stability in the last decade. Both the unions and the operators made concessions. The operators definitely established the right to control their production and their mining facilities.'"

MR. ROWNTREE: Then I asked him a question.

"There Mr. Love states that the contract attained the stability in the industry and yet says that

[1505] the operators retained the right to govern the working time of the men."

MR. COMBS: If counsel will pardon me, when he refers to the statement of Mr. Love on page 125 of the 1952 convention minutes, which is Exhibit 133, I think that statement should be read in its entirety, it's short, and I think it gives more of a picture than just what counsel gave.

MR. ROWNTREE: How long is it?

MR. COMBS: Just a paragraph. Do you want me to read it?

MR. ROWNTREE: Yes, sir.

MR. COMBS: This is a statement of Mr. George H. Love following the signing of the National Bituminous Coal Wage Agreement of 1950, March the 5th, 1950.

"We have had a good fight, but we are all glad it's over. This two-and-one-half-year contract gives the industry its first real opportunity for stability in the last decade. Both the union and the operators made concessions. The operators definitely established the right to control their production and their mining facilities. The union asked for a cooperative administration of the Welfare Fund, and we are giving it to them. We will help every way possible to make this huge fund a definite credit and benefit to the industry. However, the responsibility is squarely on the shoulders of the union, and if it fails, the public and ourselves will look directly at the union.

[1506] "This coal business is not a sick industry as has been said recently. This country is one of a very few where coal mining is still in private hands operating under a free enterprise system. It carried the country's enormous needs during the war and since without government help or subsidy. It is a modern agressive industry with three to six times the productivity of the coal industry in any other country, and we are going to do better than that.

"We need stability and the contract provides it. We are sorry for the public inconvenience during the last few months, but we do feel justified in pointing out that the public buys our coal relatively cheaper in this country than anywhere else.

"After this battle with all its hardships to everyone concerned, I don't believe anyone is going to be anxious for another one soon, and I hope that from this contract

will come such mutual understanding that we will do away with coal strikes in the future."

This was made immediately after the execution of the 1950 contract at a press conference.

MR. ROWNTREE: So I asked him at the top of page 389:

(The reading of the deposition was continued.)

"How did this contract attain stability in [1507] the industry?

"A By the elimination of the hippodromes that were held from time to time by the industry in the attempt to negotiate a new wage scale.

"They were, in effect, Roman mobs; and all the spotlights of modern means of communication were turned on them and all the mechanisms of our modern communication systems were utilized by the press and the radio and television to sensationalize their reports on the progress of the negotiations in this large and important industry.

"Stabilization—the word used here by Mr. Love—— the word 'stabilization,' and as used by me on numerous public occasions, ran to the question of stabilization of production facilities and the elimination, if possible, of the long cessations of production; the 3-ring circuses of the wage conferences, with contending operators in the various subdivisions of the operators' organizations pulling this way and that, and being interviewed, a la Mr. Moody and Mr. Love.

"Mr. Moody's ill-conceived utterances, as repeated by you, on a number of occasions were his desire to outdo Mr. George Love who was president of another association of operators as the greatest spokesman for the mining industry. But he had the overwhelming dis-

advantage of not being familiar with the industry and of having had little experience in it; because from York, Pennsylvania, in that manufacturing concern that he represented before he came down as president
[1508] of the association, there was no coal industry for him to study. So he wanted to be known as an expert with the rank of George Love, naturally, for political reasons in the association to give him more strength, because he had some critics in the Southern Coal Association.

"So Mr. Love refers to 'stability.' He hopes that there will be improved methods, as I translate his utterance to myself—improved methods, of negotiating on a more intelligent basis, with less cumbersome machinery, with less stoppage of production. And I used the word 'stability' all my life in the industry with references to our obligations in that stabilization.

"There have been many changes in the negotiations in the industry. The last changes, since 1950, have occurred without the convening of large conferences, without public apprehension of a shutdown. Because they have been privately carried on between authorized representatives of the industry and the union, without fanfare and without publicity. And they have been successful so far, which does not imply that they will be successful tomorrow nor at the termination of the present agreement, which can be terminated upon 60-days' notice by either party to the contract, the basic contract.

"Q Mr. Lewis, hasn't the word 'stabilization' been heretofore related to the problem of excessive coal for the market?

[1509] "A At least the cat is out of the bag. By that question. The answer is no, because

the United Mine Workers have nothing to do with the operation of the coal mines; the direction of working forces; nor the marketing of the coal after it leaves the tithead.

"'They have never sought to influence or to guide the question of price; the question of preparation; the quality of preparation—to refine the coal to a low sulphur or a high BTU qualification. And in our use of the word 'stability' and Mr. Love's, insofar as it relates to any of our joint interests, the word 'stability' refers to that area which concerns the United Mine Workers of America and the coal operators.

"As a matter of fact, in the basic agreement of the organization which has been there for 40 years or maybe 50, there is a clause which reads as follows, substantially:

"'The management of the mines and the direction of the working force are vested in the coal operators and the United Mine Workers of America will not abridge this right.'

"That has been the Bible on that subject.

"We do not desire to resume the responsibility of management. We don't feel we are qualified, and we think the results would be adverse to the interests of the members of the United Mine Workers of America.

"The coal, when it leaves the mines, free [1510] on board the coal cars or the barges on which it is loaded, or the trucks, finishes the responsibility of the United Mine Workers.

"Q Now, Mr. Lewis, refer again to this statement on page 297 of the 1948 convention minutes:

"'So next year in 1949, or at any other time when evil days come upon this industry, you will find the

United Mine Workers of America moving in, and if there are only three-days' work in this industry, we will all have the three-days' work. And these things are of the utmost importance.'

"And also the statement previously referred to on pages 66 and 67 of the 1952 convention minutes:

"'There comes up at this conference, we think, the question of some regulation of the working time, some stabilization in the industry. The Mine Workers have gazed at some degree with admitted apprehension at the tendency in the industry to reduce their prices in the face of increased competition. Frankly, we think the industry has been too hasty.'

"A That is an opinion on the matter of——"

MR. COMBS: (Interposing) Pardon me one minute.

MR. ROWNTREE: This is an exact quotation of the deposition, Mr. Combs.

MR. COMBS: But just to observe where it came from.

MR. ROWNTREE: If your Honor please,

[1511] I was asking the witness a question about the language we had gone over before taken from these passages, and I don't want to go through all those passages again.

MR. COMBS: I don't intend to ask counsel to do that. I just simply am going to say to the Court that it is taken from a statement of Mr. Lewis' made at a speech at the convention that has got two pages on it, and I just want to refer to the places in the exhibit.

THE COURT: I recall when it was read previously. This is an extract from a statement that was read into the record before lunch.

MR. ROWNTREE: Which I quoted to the witness in this question.

MR. COMBS: All right.

MR. CHAMBLISS: May I go ahead and answer?

MR. ROWNTREE: Yes.

(The reading of the deposition was continued.)

"A That is an opinion on the matter of public policy which the operators were utilizing to plea pauperism as a reason why they could not concede any new advantages to the Mine Workers in the new agreements.

"And the first statement you read, from the 1948 convention: My statement to the convention that when needs must we would act to stabilize the industry related entirely to the shortening of the work-
[1512] week, and the fact that we would not idly sit by and see whole areas—north, south, east or west—pauperized by the fact that their working time had been destroyed by the policy of the operators.

"In other words, it was the Genesis of the 3-day week, or 4-day week, or 5-day week. The industry now is limited to a 5-day week on production, by a joint agreement. Or emergency work can be done by the payment of overtime on Saturday and Sunday if needs must, if it is an emergency. But coal can be produced only five days a week under the contracts of the union with the industry.

"Q It is a problem arising from an excessive amount of coal for the market?

"A It is a problem of how much the market requires in relation to the production capacity of the industry.

"It is widely advocated. It has been talked of in a number of industries now. Increasingly, it will be discussed if this economic situation does not improve.

"Q Now, this 'stabilization' that Mr. Love speaks of there, was it now discussed between you and the

operators that the problem of an excessive amount of coal for the market would be solved by forcing the smaller and weaker companies and their employees out of the industry, leaving the market to the big companies or producers who were represented by Mr. Love and the other representatives at these negotiations?

"A No. No, that was never discussed.

"Q Was it not discussed that the National [1513] Bituminous Coal Wage Agreement would be used to accomplish the driving out of the smaller companies from the industry?

"A No.

"Q Now, Mr. Lewis, I believe that you have already commented upon the difference in the kind of collective bargaining you had in the industry after 1950 as compared to the preceding period."

MR. COMBS: After 1950?

MR. ROWNTREE: After 1950 as compared to the preceding period.

(The reading of the deposition was continued.)

"Would you compare the type of bargaining as to the smoothness of the bargaining as compared to the previous period that you experienced in the past 1950 period?

"A In 1950 the contract had been made between the parties for a duration period that was indefinite, governed by a clause—the expiration date was governed by a clause in the contract mutually agreed to, providing for the termination by either party to the agreement on a formal 60-day notice.

"The 1950 agreement continued for a period and representatives of the United Mine Workers inquired privately from representatives of the operators whether they would like the Mine Workers to give 60-day notice;

[1514] or would prefer, privately talked about, the extension of the agreement and under what terms.

"The operators communicated with each other on that question in their own meetings and in their own manner, and replied that they would be glad to sit down with informal representatives on both sides and try to work out a revised form of the agreement which could be adopted and remain in force, without the necessity of a 60-day notice being filed; it being understood that both parties reserved the right to utilize the 60-day notice and terminate the agreement in the event that these more or less non-public discussions turned out to be futile. That is all there is to it.

"That has been done in succession several times since 1950. The agreement has been improved for the Mine Workers. The public has not been disturbed by the threat of a strike in 60 days; because the mere filing of a notice by either party to the agreement would create public concern or synthetic public concern created by those who might be interested in so doing.

"It has been found mutually advantageous. There is no agreement to continue following this procedure. It is subject to change by mutual agreement at any time, or without mutual agreement.

"To me it seems to be constructive. It rendered unnecessary the creation of formal negotiating com-

[1515] mittees representative of all producing districts in the United States and the consequent confusion that inevitably follows those things. The newspaper notoriety. Whatever effect it may have upon the storage policy of utility and other power consumers of coal who, fearful that a possible strike might continue for some duration—long period of duration, in consequence rush into the market and buy excess quantities of coal for storage purposes; and the

reaction from that would come later in lack of working time for the industry.

"That, in substance, about expresses the arrangement."

"MR. ROWNTREE: With respect to the bargaining after 1950, we make reference to 1956, page 97 and 98."

"Quoting at the bottom of the page:

"'Following this chaotic period of labor-management relations in the industry, the Bituminous Coal Operators Association was formed on July 22, 1950, for the purpose of promoting 'stable, just and harmonious industrial relations on a national basis.'" I have read that already into the record. Go now to 395, the 1952 minutes, page 150.

(The reading of the deposition was continued.)

"MR. ROWNTREE: 'Washington conference of 1951.

"'One of the outstanding accomplishments of our distinguished president, John L. Lewis, was his successful negotiation of the 1951-52 agreement without publicity or fanfare, which became effective [1516] February 1, 1951, five months before the expiration of the then existing agreement.

"'Mr. Lewis had many conferences with Mr. Harry M. Moses, who represented the industry. Finally, in Mr. Lewis' handwriting, the suggestions below were given to Mr. Moses, who made a copy of them and handed the copy to Mr. Lewis, retaining those in Mr. Lewis' handwriting. These suggestions resulted in the consummation of the National Bituminous Coal Wage Agreement of 1950, as amended January 18, 1951."

MR. ROWNTREE: Mr. Combs here points out, "For the benefit of the Court and the jury that this was taken from the officers' report, a very lengthy report, to the convention that was held at that time in Cincinnati,

Ohio," and he also points out that, "For the information of the Court and jury, that these convention proceedings were public and the newspaper representatives attended all sessions of these meetings."

(The reading of the deposition was continued.)

"During the course of the 1952 convention, at page 525, under 'Supplemental Scale Committee Report.'

"'Inasmuch as certain contractual developments occurred after the officers' report had been printed, we respectfully submit herewith a supplemental report covering recent wage negotiations to bring the delegates up to date.'

[1517] "'A National Bituminous Wage Agreement was successfully consummated. This contract contains the following provisions:'"

MR. ROWNTREE: Then we go to page 533, that was the contract negotiated in the course of the convention, is that correct?

MR. COMBS: That is correct.

(The reading of the deposition was continued.)

MR. ROWNTREE: "Page 533 under the statement of Vice-President Kennedy:

"'I might say that in the negotiation of the recent Bituminous Wage Agreement, in fact in the last two Bituminous Wage Agreements, the negotiatiors representing the respective parties were made up of one man from the Bituminous Coal Operators' Association in the person of Harry Moses; and the other negotiator was President Lewis, of this organization.'

"The 1956 convention, page 123, there is set forth a call of the National Policy Committee of the union sent out by the president, John L. Lewis, dated August 17, 1955, and on the same date a telegram to the members of the International Executive Board from the president

of the union calling a meeting, and then there follows a circular letter of August 26th, 1955, to the officers and members of the United Mine Workers from the International officers stating:

[1518] "'We have negotiated a new contract denominated 'National Bituminous Coal Wage Agreement of 1950 as amended effective September 1, 1955.'"

"And on page 302 of the same minutes of 1956, there is a statement by Vice-President Thomas Kennedy:

"'In my talk to the convention yesterday, in analyzing the report of the officers, I referred to the new techniques that have been engaged in for the past few years with respect to the negotiation and the consummation of new agreements. Harry Moses, as president of the Bituminous Coal Operators' Association, and your president engaged in these conferences and negotiations in the making of the last several agreements—a 2-man negotiating team—and as I indicated yesterday we profited immeasurably as a result of this technique in negotiation and in the consummation of agreements.

"'Unfortunately, not too long ago Harry Moses passed to the Great Beyond. Harry Moses was a fine character. He was born in the mining districts. His people came from the mining districts. He worked in the mines himself, and in his heart he had the philosophy and the dreams of the mine workers of this country. Therefore, in the making of agreements, he and president Lewis predicated their discussions on what would be good for the industry itself, as well as for our country.

[1519] "'As I said, Harry Moses passed on to his reward, and a new man was eventually elected to succeed Harry Moses in that very important position.

"'That man happened to be a Mr. Edward J. Fox, the president of the Philadelphia and Reading Coal and Iron Company in the anthracite region. He is a good mining man. We have dealt with him in the anthracite over the years. He is honest and forthright in all of his work and in all of his undertakings. Mr. Fox assumed his position on September 1. Previous to his assumption of office, the steel workers negotiated a new contract for a period of three years, with certain increases broken down and applied particularly in each of the three. There were some questions as to the actual amount of the increase secured in that contract. It probably runs about 29 cents an hour over the 3-year period, or thereabouts. But, regardless of the amount, in our judgment, the steel workers did a good job in pulling a contract out of the fire, as a result of their strike.

"'There is a very close identity of interests between the United Mine Workers of America and the steel workers, because in reality they constitute more or less a joint industry because of the captive mines operated by the steel companies, the employees of which are members of the United Mine Workers of America,

[1520] and we congratulate the steel workers for the successful ending of their negotiations in the making of this new agreement.

"'Well, it would naturally follow that the people at the head of the steel companies who also control the captive mine industry, when they fixed the money that could be applied to the captive mine industry in the

making of our new agreement. Consequently, in the early part of August we sounded out, through Mr. Fox, whether or not the coal operators, represented by his organization, were willing to follow the same course and the same pattern in the making of a contract as was followed by Harry Moses and his executive committee. We got word back that they did want to follow that course; that 60-days' notice was not necessary for the reopening of the contract which expired September 1. Therefore, negotiations were engaged in similar to the negotiations we had in the past.

"'A number of meetings were held and finally matters reached a point about a week ago last Monday where we thought that there should be an enlarged conference, such as they had previously under Mr. Moses, when the final word would be spoken by the respective parties. That conference was held in Washington a week ago last Friday. Both sides laid down their bases of suggested agreement and understanding.

"'The operators recessed and Mr. Fox
[1521] returned and accepted the proposals as made to the joint conference the previous Friday."

MR. COMBS: Counsel, pardon me. The statement of Mr. Kennedy continues on 303 about a half a page, and we make reference to the full statement.

(The reading of the deposition was continued.)

"Q Mr. Fox was the man who carried on these informal negotiations after Mr. Moses died?

"A He is the president of the Bituminous Coal Operator's Association with offices in Washington; and in the capacity we understand the coal operators expect him to dispose of all the routine business incident to the operation of the joint agreement with the United

Mine Workers of America and all other parties who are affected.

"So naturally the negotiations began with Mr. Fox."

"Q Mr. Lewis, the successive agreements to the National Bituminous Coal Wage Agreement from 1950 on increased the wage each time, did they not?

"A I think so. That was the intent of the effort."

"We have as the next exhibit the United Mine Workers Journal of December 15, 1958, page 3. I will just read the summary on the left-hand bottom of that page:

"'Following is a contract-by-contract listing of major gains made by UMWA negotiators since 1950, the year the Bituminous Coal Operators' Association was formed:

[1522] "'1951—signed January 26, this agreement raised wages $1.60 a day to $16.35. It also added the stabilizing feature of the "open-end" termination arrangement which meant that the contract was firm for a year, could then be terminated only by 60-days' notice from either party.

"'1952—effective October 1, the 1952 agreement raised basic wages $1.90 a day to $18.25, increased operator payments to the UMWA Welfare and Retirement Fund from 30 cents a ton to the present level of 40 cents a ton.

"'1955—effective September 1, the 1955 agreement boosted wages in two steps, $2.00 a day to $20.25 a day. Vacation period was lengthened to twelve days and payment therefor raised from $100 to $140. Punitive pay for Saturday and Sunday work as such was added.

"'1956—signed October 4, the 1956 agreement provided for a second two-step $2.00 a day wage boost, which brought basic wages to $22.25 a day. Vacation pay was hiked $40 to $180 a year, and for the year 1956

only, a Christmas vacation of three days with the payment of $40 for that time off was provided.

"'1958—effective December 1, the contract called for a third two-step $2.00 a day wage increase, bringing basic wages as of April 1, 1959, to $24.25 daily. Vacation pay was raised $20 to a total of $200 for a 14-day period. The protective wage clause, designed to prevent handling of non-union coal by
[1523] commercial operators, was added to the agreement.'

"Mr. Lewis, as the principal representative of the union in dealing with these coal companies, you were familiar with each of these large coal companies and knew them rather thoroughly as far as their financial side and their production side was concerned, is that right?

"A In a general way. I have testified that we have a substantial knowledge of the form, structure, reserves, markets, and financial position of each of the important coal companies in the country, acquired during our tenure of office.

"Q Is it not true that these increases, these successive increases in the wage rate—was designed to meet the increased ability of these large coal companies to pay these successive wage increases?

"A The United Mine Workers had no relation to those elements of consideration. The mine worker was merely interested in getting a compensatory rate for his services in an ultrahazardous industry, affected with much unemployment, and that was the sole consideration of the United Mine Workers. We did not intend to have the operators do anything except what they judged themselves was essential to do in the

operation of their mines or in the marketing of their coal.

"Q Now we refer to page 128 of the 1956 [1524] minutes. I am addressing this question particularly to that paragraph in the middle of the page, Mr. Lewis, where you make a statement following Mr. Moses' statement after the signing of the 1955 contract, and particularly that language where you say, with reference to the contract:

"'It is based upon the economics of a modernized industry. It is tailored to fit the future requirements of constantly progressive industrial techniques. It is in line with the established policy of the Mine Workers to share with the public and investors in a constantly increasing man-day productivity. Man-day productivity has increased approximately 40 percent since 1950.'"

MR. COMBS: Did you read that paragraph?

MR. ROWNTREE: I continued the question after quoting the language to the witness. May I complete it?

MR. COMBS: Go ahead, sure.

MR. ROWNTREE: May I complete the question?

MR. COMBS: Yes.

(The reading of the deposition was continued.)

"Q Now, Mr. Lewis, are you saying in effect there that the contract was tailored to fit the ability of the mechanized companies to pay more wages because of their increased productivity per man per day by reason of their modernization of their plants?

"A No. I would like to read into the [1525] record——

"Q All right, sir.

"A The complete paragraph.

"Q Yes, sir.

"A This witness speaking: —I think this was made at a public press conference.

"Q It looks like a press conference.

"A When the agreement was signed.

"Q That's right.

"A And the press and radio came in and Mr. Moses and I made separate statements in behalf of our respective interests.

"'Mr. Lewis: Thank you, Mr. Moses. I have a brief statement, gentlemen.

"'This agreement is sane and in the public interest. It preserves the era of pacific relations effective since 1956.'

"MR. ROWNTREE: That should be 1950.

"MR. COMBS: 1956 is what the stenographer had. I assume he refers to 1950.

"MR. KRAMER: Let's correct it then. I suggest you start again."

(The reading of the deposition was continued.)

"'This agreement is sane and in the public interest. It preserves the era of pacific relations effective since 1950. It will not oppress the coal consumers nor yet expose the brittle bones of the operators to
[1526] the icy blasts of the coming winter.

"'It is devoid of Marxian babble, contained no wind or water.

"'It is based upon the economics of a modernized industry. It is tailed to fit the future requirements of constantly progressive industrial techniques. It is in line with the established policy of the Mine Workers to share with the public and investors in a constantly man-day productivity. Man-day productivity has increased

approximately 40 percent since 1950.

"'Production per man-day is 9.773 tons on a national average.

"'This productivity is in amazing contrast with British and Continental productivity which is less than one and one-fourth tons per man-day.

"'This agreement is a constructive instrument with edible virtues.

"'Mine Workers require strong meat and eating money will produce more coal than philosophic discourse.'

"You all have copies, haven't you?"

"Q Now, Mr. Lewis, turn to page 308 in the same 1956 book, page 308.

"At this point I believe you are speaking to the 1956 convention.

[1527] "Commencing in the middle of the page there:

"'This contract encompasses all that the industry is able to pay at this time. There isn't any more. If there was we would get it. So there isn't any more. It is all there wrapped up. If you look at it long enough you will find it is good. Your officers know something about this industry. We know the status, the financial standing, and the market possibilities, and the operating costs, and can project them far to the future of any major coal company in this country. So we are equipped with the facts when we talk with them.'

"So, with respect to the major coal companies, Mr. Lewis, you were familiar with their ability to pay these progressive increases in wages?

"A We were dealing with the preponderance of tonnage in the industry and making a contract with the industry through the only established articulate leader-

ship that they had until that time created; namely, the negotiating representatives of the operating end of the industry who sat in joint conference and who participated in the task of negotiating agreements; who sat for endless days in negotiating conferences over each and all of the questions at issue.

"The industry as a whole increased its productivity—and those are national averages, the figures [1528] which I quote here. All in the public interest, all consistent with the traditions and practices of our economy since industrialized America has come into being; and we were representing only the interests of the members of the United Mine Workers of America, and were not responsible or concerned in any official way—and certainly not in any personal or private way—with what the operators of the industry, as such, would do as affecting those questions over which the United Mine Workers of America had no jurisdiction.

"To suggest that the wage increases negotiated during the period since 1950 in any way were designed to favor certain companies whom you wrap up under the subject of 'large companies' is absurd, completely wrong, and constitutes an insult to the integrity of the members and officers of the United Mine Workers of America.

"You are charging me, by implication and by inference, with being particeps criminia to a conspiracy to aid special interests in the coal industry; under conditions which, if proven, would make this witness guilty of a crime, together with his associates.

"Officially in behalf of the union and personally, speaking for this witness alone, I deeply resent the aspersions and the implied suggestions that I would

participate in an unlawful conspiracy after a half century of service in various positions for the United Mine Workers of America.

[1529] "Q Well, Mr. Lewis, I am sorry you feel that way about it, but I do want to go on with some other statements which you made at the 1956 convention.

"On page 310, paragraph commencing at the top of the page:

"'These great combines now being formed in the industry are able to save enormous sums of money in the production of coal, in the buying of supplies, on the part of managerial ability and administration in the reduction of the idle daytime, because of their ability to make contracts with the great power-consuming and manufacturing industries of the country, and deliver them on schedule, enabling them to plot their production with the maximum number of days of operation per year and cutting out the unnecessary idle day drag that mounts the cost of production.'

"Now, isn't it true, Mr. Lewis, that these things, together with the mechanization of the mines, contributed to the saving of money in the operation of these large coal companies to a degree beyond the ability of the small coal producers such as exists in East Tennessee to match?

"A Counsel, the statement you have just read, which I made, is in line with the accepted technique in the whole of the American economy.

"The United Mine Workers are not responsible for the entry into the industry of any American
[1530] citizen who thinks he wants to become a miner, a producer of coal.

"He may well be equipped to come into the industry and assume that task or he may be inefficiently equipped.

"He may be without any knowledge of the industry. He may be without adequate funds. He may be without any knowledge of where he can market his tonnage which he intends to produce.

"He may have substantial credit in the banks and be capable of buying the best that the market will afford in manpower, in managerial ability, in equipment, in advertising, and all the marketing arrangements. Or he may be the reverse: Utterly without all of those things.

"He may be a farmer with 10 acres or 40 acres of land underlain with some coal veins. He may decide to open a mine there with the brother-in-law's assistance and produce their own requirements of coal on his own land, under his own conditions.

"He may enlarge that and sell to his neighbors.

"He can scarcely be considered a formidable competitor in the open market with better-equipped, better-managed concerns, with ample credit for the production of coal.

"In the same manner that a chain store may erect a mammoth retail establishment across the street from a corner groceryman who has been on that [1531] corner selling groceries to his patrons for half a century, but the chain store, through all the reasons and elements that are contained in the matter of purveying groceries, ultimately will take much of his trade.

"The United Mine Workers of America are not responsible for anybody who fails to succeed in the

business world or in the mining industry.

"An average of 400 to 500 concerns go into bankruptcy each week in the United States of America. Sometimes 300 or 350; sometimes 650; sometimes 425; but a fair average, in my estimation would be 400 to 500.

"Who is responsible?

"To some degree, certain business enterprise coming into conflict with what might be called the genius of our modern society.

"We are living in a time, in a period, that is fascinating, because never before in any country in all history has the genius of mankind flowered as it has in our own country in our own time.

"It runs to the question of why, for instance, we are sitting here today on the tenth floor of a modern hotel in Tampa, Florida, instead of patronizing a third-rate hotel eleven blocks down the street somewhere from where this edifice sits.

"Why? Because we are able to pay. Because [1532] this hotel has been erected and it takes away trade from inferior hotels, by choice of the patron.

"That is the old theory, in effect—if you want to get down to the bread-and-butter elements in this thing—why people buy their commodities in the cheapest markets, and the enterprise that produces the cheapest commodity achieves an advantage in the cost production by the volume of purchases.

"So it is with these pallid, underfed, ill-nourished operators of small coal mines who cannot keep up with the economic procession nor live under the rules of competition as it now exists in this free enterprise nation.

"The United Mine Workers of America disclaims any responsibility for those units of the industry, those lesser producers whom you seem to believe should be kept alive at the expense of the body politic and the body social; and that the rule of industry should be that only the inferior producers of this country should be patronized, on an equal basis with the larger enterprises and more efficient enterprises.

"It is the public policy of the United States, in buying the essential items necessary to properly operate and protect this government to which we all adhere, to enter the open market and buy from the modern enterprises that furnish them their goods at the lowest price on the market.

[1533] "There can be no conspiracy in the United Mine Workers of America, by the United Mine Workers of America, for bargaining with the coal industry in the only way that it is possible to bargain with the industry after 70 years of experience: Namely, to deal with those representatives of the industry elected by the coal industry to so represent them in their dealings with the United Mine Workers of America."

MR. COMBS: Pardon me, Counsel. That finishes the two quotations of Mr. Lewis on which the questions were based and are taken from a speech that Mr. Lewis made at the convention in 1956, commences on page 306 at the top of the page. The matter before the convention is a question of the approval of the 1956 contract that was negotiated while the convention was going on. The statement runs from page 306 to 311 as contained in Exhibit P134. We don't desire to read it.

(The reading of the deposition was continued.)

"MR. ROWNTREE: We introduce at this time the

United Mine Workers Journal for May 15, 1952, page 6. I want to quote particularly the sentence starting five lines down:

"'We've got many units of our industry that aren't modern, with low productivity and obsolete machinery, not well financed, no marketing outlets, mining a poor grade of coal, and with inefficient management. They're just a drag on the industry. The constant
[1534] tendency in this country is going to be for the concentration of production into fewer units, with the best possible equipment, under the most modern plants that our engineers can devise with less idle-day loss, because the more continuous operation is geared to standard, qualified, marketing outlets and practices. That's the tendency.'

"Ane continuing with the next sentence:

"'More and more of the obsolete units will fall by the board and go out of production.'

"That, in substance, I take it, is what you have been saying in the answer you gave before?

"A This statement which you have just read is merely an analysis of what is practiced and constitutes a shibboleth of the American economy and its varies industrial units.

"Obviously the statement is factually true in each and every particular. That will be the trend. That has been the trend in the years that have eventuated since 1952.

"The prediction in this statement as to the future is obviously well premised and has been justified by the records made on the scroll of time since that date.

"The United Mine Workers are not responsible for the individual units who fail to keep up with the com-

petitive marking pace of American industry.

"These units are like the soldiers on the
[1535] forced march. A certain percentage are compelled to fall out and rest by the wayside, while their more stalwart comrades carry on, burdened though they may be.

"I know of no other way in which American economy can operate. I do not know anyone who generally known and generally understood and commonly knows any other way that the American economy could operate and preserve the principles of free enterprise, investment for profits, reward for genius—call it 'capitalism,' if you will.

"The difference between our American concept of freedom and liberty, free enterprise, reward for genius, individual participation in a trade, vocation, occupation, enterprise—freedom of employment, the right to organize, the right to pay taxes for the privilege—those concepts, those standards, those principles, are what are causing world-wide conflict in the years in which we now live, between those forms of government who adhere to the socialist or Marxian concept of the operation of a state—who believe that the individual citizen is naught but the servant of the state—that he has no right to participate in the rewards of his own genius or his own labors and should be content with the sub-standard conditions that affect him as an individual; all because of his fealty or his presumed fealty to the original philosophy of Communism.

"This is America in which we live. The
[1536] competitive theory is predicated upon the assumption that the strong shall be the vanguard of American enterprise, and the weak, of

necessity, now as in all periods of history, will naturally trail the strong until they fail and fall.

"The United Mine Workers of America and its negotiating representatives with the operators of the industry nation-wide are not responsible for those things. They are parties in an association with all others.

"The same is true in our profession; in all elements of our modern society.

"In the American Bar Association. The average annual earnings of an attorney-at-law in the United States is amazingly low. Amazingly low. Because, where we have hundreds and perhaps thousands of attorneys who make fabulous incomes annually and are able to command those rewards by their genius or their skill, or their towering eminence in their profession, in contrast are the county-seat lawyers in the backward counties of the United States, covering vast areas. The reward for genius expressed in the legal profession, as I ought to know. The same principle, sir.

"It is idle to inferentially accuse the United Mine Workers of being responsible for this condition in the legal profession or in the mining industry.

"I might go on with further analogies and take up other vocations and other industries and other
[1537] professions. And an analysis would bring us to one and the same conclusion, because the same traits of human character exist among all men under our flag.

"Q Mr. Lewis, do you think that the inevitable outcome of this American industrial complex is that fewer and fewer units of production will come about and

that the smaller businessmen and their employees will inevitably be gobbled up by these large combines, as you call them?

"A I do not adapt your language."

"Adopt your language," I guess he must have meant "adopt."

MR. ROWNTREE: Go ahead.

"A I simply say that to any student of American industry there is an evident strong tide running in favor of increased productivity on the part of the individual employed that is emphasized, that is cultivated, that has flowered to a great degree in many of our modern industries.

"It is already here and will continue because the American people have adopted that policy and they find it productive and good. That it is raising their standard of living in the United States. It is increasing the annual income.

"In 1933 and 1934 the gross national product, so-called, of the United States fell to about 40 or 44 billion dollars for all the people of the United States.

[1538] "The President but yesterday avers that at the present time it is more than 500 billion dollars, practically 505 billion.

"The mere increase in population is insufficient to justify that sort of an advance without the requisite fact, the prime reason, that the income of the people is advancing, that their purchasing power is increasing, that they live longer, that they live longer, they enjoy more vacations. Old age and insecurity and evil days are guarded to a greater degree than ever before in the history of our country. All being matters of prime concern to the head and to the members of every household in the United States.

"There is no reason to think that is going to change soon. It can't change under the compulsion of this overwhelming sentiment of the American people, and the investors of America are looking constantly for greater and greater rewards for their investments.

"Q Mr. Lewis, is there no place for the so-called small business getting started with low capital? Or does the businessman have to be a big combine with tremendous financial resources in order to get into the business world?

"A That question is one that cannot be solved or answered competently by this witness nor by anyone else that this witness knows.

"The future of every man, of every enter-
[1539] prise, rests with the man or the enterprise. Only he can determine what he will do under the circumstances that exist.

"I could make no prophecy on that.

"Q Mr. Lewis, the contract, the National Bituminous Coal Wage Agreement, contained terms which were included in each and every contract executed by the union with any and all coal operators throughout the country, is that not right?

"A That, sir, is the policy.

"Q Do you not think that the statements we have read from show a concern by the union that these large combines have the ability to pay these increased wages?

"A Obviously they have the ability or they wouldn't pay it and they couldn't pay it. That is part of the distribution of wealth.

"Q And do you not think that these statements reflect the attitude of the union that the union does not

care whether these smaller units can pay these increased wages?

"A The question of whether or not the union cares—the union being a composite of hundreds of thousands of members—and the industry being one that notoriously is over-developed, with a production capacity far in excess of economic requirements—the union, like all other elements, is bound by the conditions that exist, and cannot guarantee and in fact cannot afford to undertake to become the sponsor and the protector of thou-

sands of inefficient and ill-operated, uneco-
[1540] nomic mining units.

"I point out again on the record that the number of units engaged in mining in the United States—consisting of large companies, small companies, partnerships, and individuals and syndicates—has been progressively reduced over the last 25 years from a total number approximating 12,000 to a total number now extant of 8,000 mines.

"I again observe that the United Mine Workers of America are not responsible for this failure or withdrawal of nearly 5,000 units in the industry from the business of mining coal.

"The United Mine Workers of America are victims of that situation just as are the investors in these uneconomic mines.

"The technologic advances made by the industry, which affects vitally the production of coal and the ability of the industry to stay in the business, has augmented unemployment in the mining industry and has driven from their jobs or made idle hundreds and hundreds of thousands of coal miners.

"I point out that in World War I nearly 750,000

bituminous coal miners produced 500 million tons in the peak year of production for war needs in World War I.

"I observe that in World War II, with 300,000 less men employed in the industry, the peak prod-
[1541] uction year produced 625 million tons.

"There is the story of the American mining industry.

"Q Could you bring that figure up to date, Mr. Lewis, as to what number of units are producing what tonnage up to the present time, or do you have those figures in mind right now?

"A The American mining industry made that contribution and that rate of progress has continued in the years since World War II ended.

"In fact, the tempo and the pace has increased; and with a manpower of something over 200,000 men in the coal industry at the present time, the industry is capable of producing in excess of 500 million tons per annum now.

"In World War I the production per man per day averaged about three tons; so it took 750,000 men to supply the needs of our nation during wartime and the requirements of our allies in that struggle.

"The average production now in 1960 is 12 tons per man on a national weighted average; in contrast to the productivity per man per day in World War I of 3 tons.

"Those are the facts. That is the trend.

"Q Mr. Lewis, this uniform contract throughout the United States, did the union conduct intensive drives to make that contract applicable to all mining units throughout the country?

[1542] "A I have testified before that one of the objects of the United Mine Workers of America—designed to improve their lot, to increase their wages, shorten their hours, promote safety, abate occupational disease, the incidence and ravages of occupational disease—caused the founders of the union when the union was first founded—first conceived and first founded and first came into being—that was one of the objects to make this program successful: The organization of all miners in the union, based upon the slogan 'United We Stand and Divided We Fall.'

"In other words, they recognized the unhappy lot of an individual employee in trying to bargain with a mammoth operation or a lesser corporation.

"'In Union There is Strength.' That is the only way in which the operators could be induced to collectively bargain for those items of concern to the working miner.

"In addition, the union stands for the principle that equal service must be predicated on equal pay.

"So there has been no departure from the uniform contract on the part of the United Mine Workers except when needs must and forces beyond our control have deprived the union of any power or influence in the question.

"Every device—economic, social, political and legal—has been used continuously, during all the [1543] years since this union was organized, not only to prevent the accomplishment of the objective but to establish conditions whereby the union could not exist and where men who dared to join the union were inconvenienced and persecuted without stint and became victims to denial of their citizenship rights and social advantages, in contrast to their

fellow citizens who enjoyed immunity from such oppression.

"Q With respect to the organizing activities of the union, we make reference at this point to page 267 and 279 of the 1952 convention minutes.

"'Organizing Activities. In October, 1950, an International organizing committee was set up by the International Executive Board to promote an intensified and integrated organizing campaign in the non-union areas of the bituminous coal industry.

"'Under the direction of this committee, and your International officers, considerable progress has been made in both the strip and underground fields of the east. Progress is also being made in the anthracite bootleg operations.

"'Some of the non-union operators have appealed to the courts for injunctive relief against the United Mine Workers of America. Although several of these injunctions have temporarily impeded our campaign in certain areas, they have not appreciably affected our drive, and we anticipate success despite
[1544] these legal bulwarks.'

"The last paragraph.

"'Your International officers have considered the organizing campaign of foremost importance and will continue to extend every effort and attention required to assure all men employed in the bituminous coal industry the privilege of membership in the United Mine Workers of America.'

"The statement on page 279, the same minutes, comment upon the report of Vice-President Kennedy.

"'We have been conducting organizing campaigns in unorganized sections of our industry, especially in

regard to strip pit operations and the operations of the smaller mines. We have had very little difficulty in organizing large units, but we have extreme difficulty in organizing strippings where the workers are taken from farms and small towns adjacent to the stripping operations. But we are making progress and we shall continue to do so until the banner of this organization flies over every mine and every strip pit in the United States and Canada.'

"Page 284 of the 1956 minutes.

"'Subsequent to the last International convention, the organizing committee which was formed by the International Union in 1950, has continued to function concentrating its activities on the non-union areas of the bituminous anthracite industry.

[1545] "'Notwithstanding the liberal use of injunction by the courts against your union, the organizing committee and your International officers were able to overcome such obstacles and have conducted a decisively successful campaign. In addition to organizing scores of small mines throughout the industry, this campaign has culminated in all of the major non-union operators signing the joint agreement.

"'We are particularly pleased to report that in Kentucky, the West Kentucky Coal Company, the Nashville Coal Company, the Homestead Coal Company, the Colonial Coal Company, and the DeKoven Coal Company have all been organized.'

"It speaks about in Oklahoma and Kansas. Down at the bottom of that page.

"'With few exceptions, consisting primarily of very small operations, the coal industry today enjoys an unprecedented degree or organization. Although con-

siderable progress has been made, we will continue to concentrate our organizational campaign in the bituminous area of Pennsylvania as well as in the bootleg mines in the anthracite region of Pennsylvania, and in northern West Virginia, Virginia, and Tennessee.

"'Your International officers will not relax their activities but will continue exerting every effort to extend to all employees of the coal industry the opportunity to enjoy the benefits of membership in the United Mine Workers of America.'

[1546] "Mr. Lewis, the union has been aided in its organizing drives——"

MR. COMBS: (Interposing) One moment. May I make a comment, Counsel? The excerpts that he was reading from were taken from the report of the officers to the conventions that he made reference to and I might point out of particular interest the last word that he read there had to do with organizing efforts in Alaska.

MR. ROWNTREE: I disagree under the language that it is really limited to Alaska, I think I skipped a paragraph.

MR. COMBS: That's all right. Your Honor, it was Alaska, and he read under the wording of that heading.

MR. ROWNTREE: There was some difference on that. There is a paragraph before that called Alaska, then there was another paragraph at the end of that one and I believe the sense of it is applying generally.

THE COURT: Well, is not all of this easy to recognize when you shift from one quotation to another? However, when we get into Mr. Lewis' answers I can tell from the syntax and grammar who is speaking on almost every occasion.

MR. COMBS: I do think it does that.

(The reading of the deposition was continued.)

"Q Mr. Lewis, the union has been aided
[1547] in its organizing drives by finances, the use of its own finances, and by the big coal operators also; is that not true? And I make particular reference now to page 545 of the 1946 minutes which refers to the acquisition of the West Kentucky Coal Company by Mr. Cyrus Eaton."

THE COURT: Perhaps this would be an appropriate place to take a recess.

MR. ROWNTREE: Yes, sir.

THE COURT: Suppose then we take about a 10-minute recess at this point.

(Thereupon, a recess was had.)

MR. ROWNTREE: This is page 545 of the 1956 minutes.

"'When Mr. Eaton's interests bought the West Kentucky Coal Company, which was operating non-union for more than 50 years, his first official act was to have that corporation sign the industry agreement with the United Mine Workers of America.'

"MR. COMBS: May I point out this statement read by counsel is a statement made by President Lewis just before he introduced Secretary of Labor Mitchell to the convention at Cincinnati."

MR. COMBS: That's short. May I read that, it's just one paragraph?

MR. ROWNTREE: All right.

MR. COMBS: "President Lewis: Before
[1548] presenting the Secretary of Labor of the United States, I want to take this occasion to present to the convention a visitor who came down to hear the

Secretary's address, Mr. Cyrus S. Eaton, of Cleveland, Ohio, one of America's foremost industrialists and financiers. Mr. Eaton is one of the leaders of American finance and industry who believes in collective bargaining and who believes that the workers of this country should have a fair share of the values of the wealth that we produce through the increasing productivity of the American economy.

"When Mr. Eaton's interests bought the West Kentucky Coal Company, which was operating non-union for more than 50 years, his first official act was to have that corporation sign the industry agreement with the United Mine Workers of America.

"When he later bought the Great Nashville Coal Company, operated by one of the most union-hating coal operators of the country, his first official act was to instruct that company to execute the industry agreement with the United Mine Workers of America.

"If, perchance, he should buy any additional coal companies in this country, and I hope he will, I am quite assured that again his official act will bring that company, if it is not already so, under the industry agreement with the United Mine Workers of America.

I present Mr. Cyrus S. Eaton of Cleveland,
[1549] Ohio."

MR. ROWNTREE: "We file the journal of May 15, 1959, page 21."

"The article is headed 'Elk River Coal and Lumber Company Signs Contract.' At the bottom of the right-hand column.

"'What has been the largest non-union coal mining operation in West Virginia has now been brought under the terms of the UMW Bituminous Coal Wage Agreement

of 1958. The Elk River Coal and Lumber Company at Widen, Clay County, West Virginia, signed the agreement on April 7. The mine is under the jurisdiction of District 17.

"'General Manager Harold L. Beattie of the company said, 'The last count we took showed that 246 out of the 278 men eligible had joined the UMWA.' The UMWA conducted a quiet campaign to sign up the workers at the company. The company was purchased last year by the Pittston Company, a holding concern with operating coal subsidiaries in various coal-mining states. The company formerly was owned by J. G. Bradley, who had resisted efforts of the UMWA to organize his employees for 50 years.'

"Those matters have been of help to the union, the United Mine Workers, in furthering its organizational drives, have they not?

[1550] "A These incidents to which you allude were rather small incidents, advantageous to the degree that they were advantageous. Not alone on these companies but in all other companies in the industry it is always advantageous to the union to increase its membership, to augment its strength.

"With respect to Peabody Coal Company, the acquisition of those mines in question was merely incidental to the carrying out of the basic coal agreement, that when a company became a party signatory to the industry contract he was of necessity including all of the mines owned by that company wherever situated.

"Peabody Coal Company had a contract with the United Mine Workers of America for all its mines. As it expanded the number of mines under its control, naturally there was an obligation on the part of the

company not to oppose collective bargaining in those mines then operated by that company. Purely incidental.

"Q Is it not true, Mr. Lewis, that the existence of the Welfare Fund has been of great aid in organizing drives of the union?

"A Merely as one of the incidents relating to the benefits of collective bargaining to the individual. It is just one of the advantages of belonging to the union in the United States coal industry."

MR. ROWNTREE: We go to the bottom of page 422. We read from "United Mine Workers Journal,

[1551] February 15, 1956, page 10, article entitled 'District 28 Pensioners Rally at Wise, Virginia, Courthouse.'"

MR. COMBS: We had an objection to that. We don't think it is pertinent. This is a statement from the journal concerning certain pensioners in Wise, Virginia, rallying at the courthouse. I think it is totally irrelevant.

MR. ROWNTREE: Talking here about the extensive organizing campaign, the use of pensioners committees by the International Union, by the district of the International Union to extend the organizing efforts to impose the contract uniformly across the country.

THE COURT: Proceed.

MR. ROWNTREE: Reading from that article, "'The miners' pension committee of District 28 combined a regular meeting in their organizing campaign with a "sneak preview" of the Wise, Virginia, Memorial Hospital to form a rally on February 5 that attracted a crowd of 3,000 persons. Five hundred crowded into the Wise Courthouse, while the remainder spilled into the street to listen over loudspeakers.

"'Samuel Caddy, president of UM District 30 was the principal speaker. He praised the organizing drive being waged by pensioned UMWA members under the guidance of District 28 President Carson Hibbitts and Secretary-Treasurer E. L. Scroggs.'

"An article May 1, 1956, in the United Mine [1552] Workers Journal, page 12:

"'District 28 pensioners constitute their drive to organize the unorganized.

"'The organized pensioners' committee of District 28 is still campaigning valiantly and successfully to enroll Virginia's non-union coal miners into the UMWA.'

"The last paragraph:

"'The public information campaign being waged by the militant, battle-scarred oldsters has proven of inestimable value in the concerted District 28 organizing drive being led by President Carson Hibbitts and Secretary-Treasurer E. L. Scroggs.'

"Article of January 1, 1956, United Mine Workers Journal, page 7:

"'Pensioners continue fight against power companies "scab" coal business.

"'The pensioned coal miners of Northern West Virginia on December 17 took a further step in dramatizing their fight to persuade Monongahela Power Company to buy union mined coal.

"'More than one hundred of the UMWA's peppery oldsters braved freezing temperatures to hand out leaflets in four cities—Morgantown, Fairmont, Shinnston, and Clarksburg—outlining the facts in dispute. These men, all recipients of $100-a-month pensions

[1553] from the UMWA Welfare and Retirement Fund, belong to the miners' pension committee of District 31. They represent, among others, UMWA local unions located at Bethlehem mines, Dawson, Kingmont, Rivesville, Clarksburg, Barrackville, Ida May, Grant Town, Fairmont, and Morgantown.'

"United Mine Workers Journal, March 1, 1957, page 14, a picture with the legend underneath:

"'Picketing for the UMWA. These pensioned members of the UMWA, Local Union 602, have been doing their part for the organization in picketing non-union operations in District 2 in Central Pennsylvania.'

"An article from the United Mine Workers Journal, August 1, 1957, page 5:

"'UMWA Pensioners renew fight against Monongahela Power Company.

"'Approximately 300 UMWA pensioners, members of the miners' pension committee, joined forces on July 20 to picket offices of the Monongahela Power Company, in five northern West Virginia cities in protest against the non-union coal buying policies of the big power company. The company is a subsidiary of the West Penn Electric Company with headquarters in New York City.'

"United Mine Workers Journal, January 15, 1958, page 6:

"'District 28 organizes Banner Fuel.

[1554] "'This mining camp—near the town of St. Paul, Virginia—was on December 29 the scene of a happy non-holiday celebration when more than 1,000 members of UMWA District 28 gathered to rejoice over the fact that the Crane's Nest mine of the Banner Fuel Corporation was going to sign a union contract.

"'Banner Fuel reneged on its UMWA contract more than two years ago. Since then, the District 28 pen-

sioners of the UMWA Welfare and Retirement Fund have been spear-heading a strike to bring the miners there back into the union. A picket line was kept going for more than two years. Most of the pickets were the "old men" of Southwest Virginia who showed up every day, rain or shine, hot or freezing.

"'Eleven of these veterans worked their "full shift" on that picket line nearly every day of those two years and were especially mentioned by International Auditor Archie V. Woods at the Bondtown rally.'

"Q Mr. Lewis, as a trustee on the Welfare Fund did you know that these organized pensioners were carrying on these organizational drives on behalf of the union?

"A As trustee for the United Mine Workers of America Welfare and Retirement Fund, I had no knowledge of it whatsoever. No reports. It was never discussed, as a trustee.

"Through other sources I knew generally of
[1555] instances where pensioners had taken an interest in a local contest."

MR. COMBS: If the Court please, I move to strike the testimony relating to this. I think that these are classic examples of a person's right to organize, to hand out leaflets, and I see nothing in that that refers to any violation or anything that could be relevant here. I think that the rights described here are protected under the Constitution of the United States, the constitution of Virginia, and the federal laws dealing with the right of free speech and freedom of assembly, and to distribute information concerning this. I think it is a classic example of union activity, and I move to strike the entire line of testimony.

MR. ROWNTREE: May it please the Court, one,

we were contending at the other trial, of course, that we had a contest with the trustees in that case, in the case here that we are reading from, we did not think through that trial that the Trust Fund could be used as an instrumentality to promote the interests of the union in view of the rather restrictive language in the labor statute with respect to the use of funds of a Trust Fund, but these activities are put into the record here for the purpose of proving the organizational efforts of the union to spread the contract throughout the country, to make the contract uniform, the labor costs

[1556] across the country uniform.

THE COURT: I believe the objection would go to the weight or what weight, if any, should be given to this testimony.

MR. COMBS: I would like to make one more observation, if the Court would indulge me. In the case that we were trying that counsel has reference to, the trustees were charged with being co-conspirators, they were defendants, and part of the allegations were that they had allowed these pensioners to cooperate with the Mine Workers in these organizing drives.

Now, the jury brought in a verdict in favor of the cross defendants.

MR. ROWNTREE: For us.

MR. COMBS: Judge Taylor set that verdict aside. Now, just before counsel stops here, the next question he is asking Mr. Lewis in connection with this was:

"Was any effort made by the trustees of the United Mine Workers of America Welfare and Retirement Fund to sever these pensioners from union activities?"

And the answer is, "Certainly not. They had no jurisdiction in the premises."

Now, in taking this deposition I advised Mr. Lewis

and counsel that is in the record here that I thought if Mr. Lewis had tried to interfere with the pen-
[1557] sioners' rights that they would have been subjected to the charge of violating the rights of these pensioners, so I hardly see how counsel now is converting the activities of the pensioners back over to the Mine Workers. First they were trustees' instrumentalities and now the trustees are out and I suppose that he is going to make them instrumentalities of the United Mine Workers, which I submit that certainly somewhere along the line that these recognized rights and classic rights can't be used as evidence of conspiracy.

MR. ROWNTREE: I don't see any need to pursue that matter. We think that the quoted language shows the district presidents were guiding their effort, it expressly states, "Under the direction of the district president," that this was part of the effort to spread the contract throughout the industry.

THE COURT: Well, you may proceed.

MR. COMBS: May I make one more remark? I know the Court has ruled, but I call attention to the Court and to counsel, I call attention to the Allen Bradley case, which counsel obviously has relied on heavily throughout all of this litigation. In the Allen Bradley case the Sixth Circuit had issued an injunction enjoining activities of this character. When it came back, the Supreme Court said they made out a case and Justice Black in writing the opinion cut out every mention prohibiting this type of activity, picketing or any of the
[1558] recognized rights of a labor union were cut out from those injunctions and even Allen Bradley recognized that these activities could not be construed as being violations or being illegal.

The Court has ruled, of course. I am not going to

pursue it any further, because the Court has ruled on it, but I did want the Court to know our position.

MR. ROWNTREE: Well, I think Mr. Justice Black was perfectly right, he shouldn't enjoin any union from carrying on picketing activities, but he did enjoin and prohibited the union from carrying on the conspiracy by any means whatsoever.

MR. COMBS: Well, now——

MR. ROWNTREE: (Interposing) The union continued to carry on its picketing activities for the purposes of collective bargaining and other legitimate union activities, other than the carrying on of a conspiracy.

MR. COMBS: It's just a little bit different. The Supreme Court instructed the Circuit Court to draft the injunction so it would affirmatively show that it related to the picketing and that the injunction could run against the combination of the union and the employers involved in any way to carry out the conspiracy, but it showed affirmatively and Mr. Justice Black struck down that part of it.

MR. ROWNTREE: Because it was under
[1559] the Norris-LaGuardia Act, because it pertained to the ones carrying on the conspiracy.

MR. COMBS: That's right.

(The reading of the deposition was continued.)

"Q Is it part of the program of the union, in requiring these retired pensioners to retain their union membership, that they are obligated to carry on these organizing efforts?

"A Your choice of words is inaccurate on which you predicate the question. The pensioners are not required to remain members of the United Mine Workers of America.

"Q I am referring now back to this lengthy dis-

cussion we had before about the constitutional amendment with respect to the dues of retired members. The constitution was amended, was it not, to assess dues?

"A Obviously; it has been so testified here. But I point out again that your question is not qualified, because it is based on the statement that they were required to remain members. They are not required to remain members, as previously testified. They are free agents and can do as they will without impairment of their pension rights. Pensioners are free agents."

MR. ROWNTREE: That has reference to quite a lengthy session we had on the constitutional amendment with respect to dues on these retired members.

[1560] "Q Do you know what proportion of the bituminous coal production is produced by companies operating under the National Bituminous Coal Wage Agreement, say, as of the beginning of 1958?

"A Yes."

MR. ROWNTREE: Well, I think the question was changed to, "Well, say, as of December 31, 1958."

And the answer was "Yes."

"Q And what is that proportion?

"A 82 percent is produced under the contract. 18 percent for the non-signatory production. Bituminous coal only.

"Q A lot of these small companies went broke after they signed the National Bituminous Coal Wage Agreement, did they not?

"A I wouldn't know what happened to them. I only know that a great many units, continuously through the years, have retired from the business of producing coal.

"Q You were talking a while ago about the bankruptcy rate in the United States. A lot of these com-

panies were coal companies, were they not?

"A Some of them were coal companies, perhaps; I have no knowledge of it. But certainly they constituted no substantial number in contrast with the national figure."

MR. ROWNTREE: We filed a list of the [1561] companies sued by the trustees of the Welfare Fund in the various states, including Tennessee, and we would like to file that here, your Honor.

MR. COMBS: If the Court please, we object to the filing of that exhibit. The exhibit purports to show suits filed in court by trustees of the United Mine Workers of America Welfare and Retirement Fund during the period of time to collect the delinquent royalty from operators who were signatories to the Bituminous Coal Wage Agreements.

It is, of course, a duty, not only under the contract, which vests title to these monies in the trustees, but it is a fiduciary duty that it is imposed by operation of law upon a trustee to collect the money due the trust. The fact that these trustees filed these suits for the collection of these funds, we submit, would in no way be involved in this conspiracy. We don't think it is relevant, we don't think it is competent, and we don't think it is material. It is a separate entity, the trustees are a separate entity under the contract, and we see no relevancy.

THE COURT: What is the relevance of this?

MR. ROWNTREE: We are attempting to show the effect of the application of the national contract on a uniform basis across the country, the effect on a number of coal companies, the number of coal companies involved and also the effect on these particular plaintiffs, they are included in the list.

[1562] THE COURT: How is it significant except that it may or may not affect these plaintiffs?

MR. ROWNTREE: I think that it also shows the period of time.

THE COURT: It is your theory of the case that there was a conspiracy between the defendant and others?

MR. ROWNTREE: Yes, sir.

THE COURT: And that as a result of that conspiracy these plaintiffs are injured?

MR. ROWNTREE: That is correct.

THE COURT: How is this in any way related to your conspiracy or is this related to your allegation of damage to the plaintiffs?

MR. ROWNTREE: It has to do with our damage first; secondly, we add one more point and that is this, that Mr. John L. Lewis was chairman of the board of trustees, these suits were brought with respect to these plaintiffs in each case after they obtained large contracts on the TVA market after a period of a number of months when they had been shut down without business and then they obtained large contracts from the TVA market and then on the Tennessee Products' side the suits started. After the Tennessee Consolidated group got their large contract, the Floyd Hollow-Bee Branch contract, their suits over there started.

[1563] THE COURT: Well, I think what I will do, I will just let it in at the present time subject to it being connected, but, quite frankly, at this time I don't see the evidence in the record which would connect this with the conspiracy.

Now, whether it is connected with the damage to these plaintiffs, I will admit it subject to being stricken.

MR. COMBS: Just before your Honor rules, your Honor, may I point out one thing about it?

THE COURT: Yes.

MR. COMBS: This exhibit was filed, of course, when the trustees were charged with being co-conspirators and this exhibit is a compilation of the suits filed by the trustees in the district courts of Alabama, a whole series of suits, Arkansas, Indiana, Kentucky, Missouri, Montana, New Mexico, Ohio, Oklahoma.

MR. ROWNTREE: We will concede the irrelevance of——

MR. COMBS: (Interposing) West Virginia.

MR. ROWNTREE: To all other states besides Tennessee. I just wanted to put the whole thing in because that's the way it was presented.

MR. COMBS: Well, I think the whole thing should go in, but I am objecting to it on the ground that in each of these jurisdictions I think it can be shown, and
[1564] the Supreme Court of the United States held it to be the duty of these trustees to collect these funds, it's a fiduciary relationship, it's one of these situations where they have no alternative but to try to collect these monies if they perform their fiduciary duty, and this shows just what counsel is talking about, you can't isolate it to Tennessee. If it was isolated to Tennessee, I submit, Your Honor, it might have some probative value, but why in the world was Tennessee being picked on?

THE COURT: One of the problems you are confronted with trying to determine the admissibility of the evidence in this case is that when the conspiracy is alleged overt acts may consist of either acts which themselves are not unlawful or acts which are unlawful and the problem confronting the Court is not just to exclude every act on the one hand that is unlawful or that is unlawful just because it was per se lawful, nor is it the responsibility

of the Court to admit every act that is unlawful just because it was per se unlawful.

The problem is to try to determine when all the evidence is in whether or not the overt acts, both lawful and unlawful, were a part of the conspiracy, if they were then they are relevant and could be considered; if they were not, then they should be excluded irrespective of whether they were themselves per se lawful or per se unlawful.

MR. COMBS: Well, I agree with the Court, [1565] that is absolutely correct, that that is the problem, but, however, as we go along it seems to me that some of this evidence is so fantastically out of line with any conceivable probative value that we are getting a record here that——

THE COURT: (Interposing) Of course, you gentlemen have the advantage over the Court in that you have been through much of this previously.

MR. COMBS: Yes.

THE COURT: And you are in position of looking at this evidence on the basis of considerable other evidence which you possess which the Court doesn't now possess, and, consequently, the Court feels that it must be liberal in admitting evidence in the case, at least until after all the evidence is in and then it can be in a better position, but I don't mean by saying that I want to in any way curtail your right to object to anything that you think should be objected to or excluded.

MR. COMBS: Since he is offering the exhibit, I think he ought to put the whole exhibit in.

MR. ROWNTREE: That's right, put it in.

MR. COMBS: Subject to our objections on the ground I have stated.

THE COURT: All right. Exhibit 138.

(The compilation referred to above was marked P138 and received in evidence.)

[1566] MR. ROWNTREE: In the middle of page 431.

(The reading of the deposition was continued.)

"Q Mr. Lewis, is it your position that the policies of the United Mine Workers of America have been dictated from the basis of the best interests of the men in the union?

"A May I inquire is that an assault on my integrity?

"Q No, sir, I just wanted to ascertain whether that is the basic premise from which the union sets its policies: The best interests of the men in the union.

"A As the servant of the union I have made reports of my stewardship to the constitutional conventions of the United Mine Workers and have had them approved, through all the years of my incumbency in the office of president.

"The United Mine Workers of America have always regarded me as their spokesman and agent and their servant and have given approval in all circumstances where my acts were in concert with the best interests of the United Mine Workers of America and the union as such.

"My public record on those questions through the years would seemingly justify my own averments.

"Q Mr. Lewis, you have received notice, have you not, that many of the men in the union are suffering and are opposed to some of the policies of the union?

"There is no answer."

MR. COMBS: If you will pardon me, I

[1567] object to the answer to that question, because it wasn't specific, and it wasn't answered. I want the record to show that.

MR. ROWNTREE: We referred to statements upon the question of the adoption of the 1956 amendment to the contract on the floor of the convention.

We went to page 312 and 313 of the convention of 1956. Quoting the proceedings at that occasion, or part of them.

"'Delegate Demchak, Local No. 3648, District 2: I would like to discuss this new agreement and I would like to discuss it from the point of view of men who are not working full time and also men who are not working at all at the present time. As far as the wages in this agreement are concerned, they will be acceptable to me, but there are other things besides wages. I am thinking particularly of the unemployed miners that we have.

"'Prior to the mechanization of the coal mine where I worked we had 1,100 workers. With the introduction of machinery that cut us down to 800, and now there are 400 working. There are 200 on the panel. Others have gone elsewhere to seek employment. There are 200 who expected us to come out here and try to get an agreement calling for a shorter workday so some of these men could be re-employed.'

"Delegate Brown, page 314, third paragraph.

"'But I do think, Mr. Chairman and delegates,
[1568] that from now on the future, I believe that we have got pretty near to the top notching wages, and I think that the next negotiation, which one year doesn't take very long to roll around, I think that according to the hazards in the mining industry and the fumes and the noxious gases, that we should now try to start negotiating and shorten our hours per day.'

"Delegate Croyle:

"'I am a little bit like the donkey charging at a windmill, but I do want to express my resentment against this contract, which fails to recognize the economic time of

day in the coal industry. Just a while ago, Mr. Lewis said that the United Mine Workers can't be destroyed by the Democratic Party, the Republican Party, or the Communist Party. That he would bring the machinery into the mines without shortening the working day and they won't have to destroy us. There won't be any of us left.

"'I was on the third shift the night the report came out about this rumored contract. I will say one thing, I never saw one man in our mine satisfied with the increase in pay without reduction in the working hours. I feel that it has been over fifty years since we established the 8-hour day, and I think if we are ever going to have a reduction in the working time, it is about time for us to start talking about it.'

"Delegate Whitlatch:

[1569] "'I want to assure you, Mr. Chairman and all of the International officers, districts, and delegates, that I am not going to and never have criticized the action of the International Union nor the district, but I do want to say that I have always respected and upheld them to the highest because I think it is the greatest organization on earth. But I do have some comments I would like to make, as a scale committeeman, being in close contact with the various local unions and with the individual Mine Worker at home in our own mine. There are two things that need to be justified within our contract other than wages. Now, who doesn't want more money? I am not going to be one who would say that I didn't want this raise or that the men back home didn't want the raise. But I think that we do reach the point in wages whereby sometimes it begins to hurt and maybe we could negotiate it in some other way, some other form or manner that it might mean more to the Mine Workers. Now, what I meant by that, I know the operators could afford

this raise or we wouldn't have gotten it. Now, if we could have gotten it and shorter hours, it would have meant that there would have been more employment. Some people may step into another field of employment. I have got 26 years in the mines myself and at my mine maybe when I get back home there will be another piece of machinery in there which will cause me to be put on the panel because our seniority clause reads [1570] "Job Classification." Therefore, my seniority in all those years doesn't mean anything because the other man on the job has got a year or two more. And there will be men that were hired there in the last two months that will stay.

"'I think those are inequities and I think they need to be justified. As President Lewis says, there isn't much more there because if there had been, he would have gotten it. I believe that. But there will be more, and we want it to be more, because if we sit idle and don't mechanize in the coal industry and every other industry within the United States we will be sopped in by some other country. We've got to mechanize, we've got to go forward, and the production is going to increase. Don't fool yourselves, it is going to increase. The production per man is going to increase. We know that it is going to. So I think now since this contract has been drawn up and all but accepted, I don't know much else to do but to accept it. But I think that these things should be given a thought. I have a stack of resolutions that high, and it is a demand of the mine workers.

"'Now, I think the understanding before ever there is another raise in which there will be a raise in production, and there will still be more money. I think it ought to be given to the Mine Workers in some other manner or form other than wages. And I know that is what I have met with, the demand of the men back home.

[1571] "'Now, just for a second, if they will permit me, the coal mole is a machine that is taking place in the mine that I work for and the company that I work for. And a crew of eight to ten men got approximately thirty cars of coal. They put in a coal mole and with five men they produced about sixty or seventy cars of coal. So you have cut the crew in half and you have doubled the production. And those things are going to continue to happen and the bad feature about it, if there isn't something done, the man that reaches the age of 40 to 45 to 50, along in there, is generally the man let out and you show me some place he can go and tell them he is a United Mine Worker and 45 or 50 years old and he can get a job other than in the coal industry. And there is a panel at nearly every mine in our district, so you can't do that. So, I want to say this, and I want to extend my appreciation to the International officers and the districts for the great work that they have done. But I do hope that in the future we take these things under consideration because if we don't there is no question about it, there is not going to be too many of us left, and the $30 or $40 a day that you may get is not going to do your neighbor across the street any good if he don't have a job.'

"The statement of Delegate Matula, bottom of page 318.

[1572] "'As a representative of my local, we are mostly interested in hours.

"'According to Mr. Kennedy, when he was commenting on the contract, he stated he thought the increases in wages were the best for the economic condition. I wonder whether that is so, whether a shorter week would be better. We work in the mines in my district, jump on a belt line and ride maybe a thousand or two thousand feet, put a respirator on and go up to

the face and work. When we grab a drink of water or a bite to eat, there is a man standing behind us with a stop watch. We work a machine and try to keep up with that machine. I wonder which wears out first, the man or the machine.

"'In our mine a shorter workday would be of much greater benefit to us than a wage increase.'

"Delegate Mentz:

"'I believe in all the phases in the contract excepting our seniority clause, the hours and the wages on this basis: Our local instructed as to seek a 6-hour day at the same pay where the companies can put a 4-hour shift on per day and employ more men in their mines and give us all these benefits, all these miners that have been laid off. In 1933 we had in the neighborhood of 500,000 bituminous coal miners in the United Mine Workers. Due to the abandonment of mines and modernizing machinery in the mines, we have decreased to approximately 250,000.

[1573] "'By applying a 6-hour day at the same basic pay the company that I work for has three mines within a 5-mile radius. They employ in the neighborhood of three hundred and some men at the 1077 Local No. 2 mine. They are putting out their quota per month through the No. 1 and No. 3 mines. Those men are idle and walking the streets, not only in that mine, but in other mines throughout the bituminous area. That is why we are advocating a 6-hour day.

"'The money is all right, we agree with that. But we are looking after the welfare of all the individuals who were laid off due to the mechanization of mines. I am financial secretary of 2262. We have been informed by the company that they are anticipating a layoff, the same as they did at the last convention when I was here and I

was notified they laid 162 men. I was advised to stay. Other representatives went back and took care of the layoff for me.

"'We are interested in each and every individual.'

"Now, skipping.

"'Now, 500,000 coal miners, reduced to 250,000 is a lot of men. You want to remember this: Many thousands of you men—I hope you are never laid off—but, if you don't have your 20 years within your 30 years, you will never get another job in the coal mines as it applies in District 6 down there where I am working, because they will not hire you after you are 45. Men from—'

[1574] "Skip to Delegate Lapsley:

"'We are perfectly satisfied with the contract. I think the contract is fine. I want to compliment the Executive Board members and you, Mr. President, for making this contract. The question is about the seniority. The more money you get out of the companies, the more men they are cutting off. We want to know if there is some way we can protect our older men from being cut off and put on the street as soon as we get a raise.

"'Now, on our further contract, as we get a raise then the company cuts these men off. This company we work for had practically six mines. The old men who have made this wage possible for the younger men today are being shifted around and put on the sidelines. They are cut off with no place for them to go. We men who are working are enjoying the fruits of this contract, and that is fine, and we think no more about it. But we want to know about the older men who are being cut off and who have made this wage possible for us.

"'The men who have made the wage possible are enjoying it today, but they are being laid off. Those are

the men we want to look out for. We don't worry about the men who are working, because they have a job, but the men who are being shifted around by the company and are being cut off, those are the men we need to help.'

[1575]

"Delegate Sufritz:

"'Mr. Chairman, it seems to be pretty obvious from the discussions going on here that what a lot of men are concerned with are the conditions; the conditions of work. The wages I have heard no one criticize. They are all very much in favor of them and so am I. But, what is mostly of concern to them is the conditions under which they have to work.'

"The third paragraph.

"'And in the form of mechanization it reaches a new depth and new pressures are being put on the men. That is what they feel. That is what they protest against, that is what they try to have corrected. They sent us here to see if we could do something to correct these things which they feel are wrong.'

"Delegate Dugan:

"'Now, we have heard talk about classification, and I think that we should continue to talk about classification and life expectancy.'

"Down to the middle of the paragraph.

"'But now we have a more hazardous and more dangerous and a more health-deteriorating situation than the banker and the school teacher and a lot of other businessmen. We have the coal dust to contend with. We are told, I know when I started in the mine, that they were loading on an average of three tons of coal a day. Today they are loading eleven tons. But at that time the cutting was done at night, the shooting was done at night, there was less dust at that

[1576]

time than there is now with these machines.

"'These fellows at the faces are wearing masks and they are not getting the air. The heat is great from these machines and it is deteriorating their health more than it does the banker or the schoolteacher or the other business people.'"

MR. COMBS: May I interrupt counsel?

MR. ROWNTREE: That is the end of that part.

MR. COMBS: May it point out, Your Honor, that the excerpts, Your Honor, that these were speeches, as counsel has indicated, by delegates to the 1956 convention on the resolution to approve the contract as negotiated. There's some eight or nine delegates spoke at the convention as opposed to 2,000 delegates. I make reference to the Exhibit 134 here on page 332 where a vote is taken on the resolution as to whether or not the contract should be approved and I read it as follows: "President Lewis (presiding): Debate seems to have been closed and is closed. The question now recurs on the motion to adopt the resolution to confirm and adopt the contract and instruct the officers to arrange for its execution and to apply the same policy to the outlying districts. The question recurs on that question.

[1577] On that I will call for a rising vote. All who are in favor of the pending resolution to adopt the contract will rise to their feet.

"All who are opposed to the adoption of the resolution will rise to their feet.

"The Chair declares the new contract accepted by the unanimous vote of the forty-second consecutive constitutional convention of the United Mine Workers of America."

(The reading of the deposition was continued.)

"Q Do you recall the discussions on the floor of the 1956 convention with respect to the effect of this policy

of constantly increasing the wage and the effect of that policy on the unemployment of miners, and also discussion of conditions in the intensely mechanized mines?

"A I recall that there was general discussion in the convention on all of these matters; things pertaining to the contract. And, as a constitutional convention charged with making policy——and the action of the convention is a binding thing upon this officer, this former officer—— the details of those discussions are not in my mind now, and I would have to read the whole record to have any understanding of what point you are getting at in connection with that.

"The convention decided. I, like all others present, accepted the convention's decree and considered it as my instructions.

[1578] "Those questions are decided, passed by, and forgotten, except as they bind policy or affect current efforts.

"Q And is it not true, Mr. Lewis, that after that 1956 convention the union executed the 1958 contract with another wage increase and without any change in the working time of the men and without any change in the seniority rules?

"A That is entirely possible. It had no bearing, however, on the discussion of the convention.

"Q Mr. Lewis, was the ability of the International Policy Committee, the International Executive Board, and the International officers to secure approval of their acts by the various conventions the result of the intense central control of the union by the International Executive Board and officers?

"A Certainly not. Certainly not.

"The convention of the United Mine Workers is probably the most democratic—if I may use that term——

parliamentary body of magnitude in existence in the United States.

"Every major item—the officers' reports, the constitution, and the resolutions, of which there are usually hundreds—must come on the floor for disposal and cannot be killed in committee. The sponsor of the resolution cannot be deprived of the right to speak on it whether the committee concurs, non-concurs, amends,
[1579] or substitutes. If he elects to speak, he can be heard.

"There is no 'central control' outside of that strength that came through administration, as in the case of all our national affairs, through meritorious service in that office.

"My influence in the organization was solely derived from approval by the membership of my previous efforts and previous accomplishments in their interest. That is far—under out American concept—from any connection from the exercise of so-called organized influence.

"The average coal miner has an emphatic personality. In a broad sense of the word, it is primarily a requisite of that vocation.

"He is a man of courage. He is not deterred in his convictions by opposition. He is surrounded by the hazards of the industry. It is second nature with him to perform what ordinarily are called heroic acts in the face of danger to his comrades and associates. And every day, in any mind of magnitude, he risks his life and his limbs and the well-being of his family in his continuing in his work as a mine worker.

"So the idea that any member of the United Mine Workers is afraid of any officer of the organization, from the top down, is completely and genuinely absurd and farcical.

[1580] "The United Mine Workers are not ruled by fear of another's actions in command of their organization. There is no such creation. No dictatorship exists. The elective process governs.

"Q Now, Mr. Lewis, I make reference to the answer of the union to Interrogatory No. 21 of set No. 1 pertaining to the appointment of the International Executive Board members; the answer indicating that, in 1955 and 1956, as many as 21 of the 30 Board members were appointed and approved by the International Executive Board.

"Is that your recollection?

"A Those designations, elected by the International Executive Board, generally came after the ability of the industry—the ability of the district—to operate and to finance the payment of its officers.

"The district's membership perhaps had dwindled to a point where the district could not pay its own way and was not capable of rendering the service.

"The districts, by the way, are merely service stations for the membership; instituted so that representatives of the organization will have closer contact in the immediate area where the Mine Worker lives and is employed.

"In the handling of disputes and the constitutional questions that arise affecting the membership of individual members. And it is absurd to believe,—

[1581] from every administrative standpoint it is absurd to believe that the district could be represented with a full corps of elective officers when its membership perhaps does not represent but a small proportion of the total number of Mine Workers in that area.

"So all those things were done with the approval of the International convention over a period of 22 years; and for 22 years, at each convention, the matter has come up and the convention has ruled after full and

exhaustive debate ofttimes.

"Q We make reference of some of those debates.

"A Invariably when it was possible, the men designated as Board members ex officio were men previously elected to that office by the membership and merely continued their service at the expense of the International Union from whom they derived their pay.

"There never has been any question raised, so far as I know, about the personality of any of the individuals so designated.

"The speeches that Mr. Demchak, to whom you allude—'alas poor Yorick, I knew him well'—I knew him well and know him well; and he has retired now from active mining and is enjoying the superb delights of having a pension plus his Social Security plus anything else that he was able to save during his working years; and
[1582] he is one of the most satisfied, happy men that I know at the moment.

"He is no longer making speeches.

"Mr. Demchak, of course, had advanced political views. He believed that any agent or servant of the government—this is my concept of his belief from listening to him—or of any institutions operating under the American flag, and who had to deal with public welfare or represented great numbers of people as members, should be elected to office by what he called the rank and file. And he rode that horse all of his working, active life, and he wanted perfection in democracy, as he called it, while the average listener to his discourses wanted some bread and butter in the meantime, and they would disagree with him.

"And I think in the discourse to which you alluded, when you named Mr. Demchak as one of the participants after that debate concluded, my recollection is that there

were eight votes in the convention in favor of Demchak and something over two thousand against; and the convention ruled and the officers were bound by the ruling of the convention."

MR. ROWNTREE: At this point, Your Honor, we made reference to a number of pages concerning debates over district autonomy in the United Mine Workers' convention. I don't think it is necessary to get into that. I think that counsel will stipulate, would he not, that at each convention members get up and make
[1583] resolutions proposing autonomy for the various provisional districts and this occurs at about each convention.

MR. COMBS: Yes, I can make a stipulation, but I would like to stipulate like I did in the Pennington case. "There are some districts, as Mr. Lewis testified, who have autonomy, partial autonomy. Some of them don't have any of their officers elected.

"There have been debates in each of the conventions on the part of the delegates. The policy that Mr. Lewis has testified to and is in existence is overwhelming adopted at each of these conventions."

Okay.

MR. ROWNTREE: That goes on through the last two conventions?

MR. COMBS: Well, I would say this to counsel, I will stipulate, I think, that there was some resolutions in connection to autonomy but there wasn't but very little debate, but I will stipulate that.

(The reading of the deposition was continued.)

"Q Mr. Lewis, do you know a gentleman by the name of R. U. Black in District 19?

"A In where?

"Q District 19."

[1584] MR. COMBS: One thing, may I point out to counsel that I don't want to have any misunderstanding later in connection with the Board members. Now, as district autonomy, we were talking about members of the International Executive Board who were appointed.

Now, in connection with that, the last two conventions of the Mine Workers, and they are every four years, have elected those members in conformance with the Landrum-Griffin Act so the question of autonomy as it affected the Board members would not arise as testified to here.

Does counsel understand what I am talking about?

MR. ROWNTREE: All 30 of the International Board members are elected?

MR. COMBS: All the Board members throughout the entire jurisdiction of the Mine Workers were elected by the convention since 1956, 1960 and '64.

MR. ROWNTREE: 1960 and 1964?

MR. COMBS: Yes.

MR. ROWNTREE: And before 1960 the answer was that 21 of the 30 International Board members were appointed by the International Board?

MR. COMBS: That is correct. At one time, of course, that varied from time to time with deaths and resignations and vacancies, but at one time.

MR. ROWNTREE: I think the particular time that was mentioned there was 1955 and 1956.

[1585] MR. COMBS: Correct.

(The reading of the deposition was continued.)

"Q Mr. Lewis, do you know a gentlemen by the name of R. U. Black in District 19?

"A In where?

"Q District 19.

"A R. U. Black?

"Q R. U. Black.

"A The name means nothing to me at the moment. Could you be a little more definite?

"Q Let me see. His name appears some seven times on the list of delegates from District 19 at the 1948 convention. Pages 398 through 402.

"For instance, he was a delegate from Local Union 6130, Middlesboro; Local Union 6936, Balken, Kentucky; Local Union 8803, Capito; Local Union 8852, Ferndale, Kentucky; 8961, Middlesboro, Kentucky; 8970, Balken, and 9038 at Hutch. In each instance having one vote at the convention for each one of those local unions.

"Was there a practice of having a single individual having a number of votes representing several local unions at these conventions?

"A Under the constitution each delegate is entitled to represent a membership up to 500; having, on a roll call basis one vote for each one 500 of the mem-
[1596] bers. So some delegates represented 100 or less. If there were only 10 men in the local union, he got one vote. If he had 100 members in his local union, he would be entitled to two votes. And so on up to a limit of five.

"And a local union was privileged to have two delegates present if they elected to bear the expense of sending two delegates, if they had 101 votes or more, up to 199, they would be entitled to three delegates, if five votes, one delegate."

MR. COMBS: "Members" there. When you are saying votes, that should have been "members," a typographical error.

MR. ROWNTREE: Five members and one delegate.

MR. CHAMBLISS: Five members, one delegate.

MR. ROWNTREE: That's right. Go ahead.

(The reading of the deposition was continued.)

"A So when they list—the credential committee, in preparing the credential committee's report to the convention as to the seating of delegates and the qualifying of them, they would list the number of votes on roll call to which each member was entitled—each delegate entitled.

"Q Mr. Lewis, the 1952 contract, you recall, had a provision in it, talking about the clause in the 1952 contract:

"'As a part of the consideration for this agreement the operators signatory hereto agree that this agreement covers the operation of all of the coal lands owned or held under the lease by them or any of them or [1587] by any subsidiary or affiliate at the date of this agreement or acquired during the term which may hereafter (during the term of this agreement) be put into production. The said operators agree that they will not lease out any coal lands as a subterfuge for the purpose of avoiding the application of this agreement.'

"Now, when a non-union coal operating company, such as Osborn Mining Company, sought to go on lands owned by a signatory operator, he would be barred by the terms—be barred from the land by the terms of that clause that I have just quoted?

"A I wouldn't think so. I cannot give a legal definition but it is my understanding and belief that he was not barred.

"Q Did you not have conferences with signatory operators, such as with the president of Black Star Coal Company, with respect to who could take leases on the coal lands of that operator and who could not?

"A The signatory operator holding such lands binds himself in the contract, to his negotiating representatives,

to certain stipulations.

"It is reasonable to assume that any lease which he would effect would protect him by an iteration of the clause to which you refer.

"It merely narrows the terms of negotiation [1588] between him and an application for a lease.

"Q Do you recall conferences you had with Mr. Hill of Black Star Coal Company?

"A No. It's one of innumerable conferences, I suppose, which I have had through the years which I do not always remember day to day.

"Q Mr. Lewis, these largest coal companies in the country have acquired tremendous reserves of coal lands; is that not right?

"A I am at a loss to understand what you mean by the term 'the largest coal companies.'

"Q I am speaking of Peabody Coal Company, Consolidation Coal Company, the Pittston Company, Pittston Company, Pittsburgh, Midway Coal Company.

"A May I ask if those companies thus named are the only companies that you would include in that category in the industry?

"Q I would include West Kentucky Coal Company and Nashville Coal Company. Yes, those are the ones I am talking about.

"A I assume that every coal company in the business acquired such reserves to the degree that they are capable of acquiring them—purchasing them, leasing them, paying taxes thereon or royalties.

"As to the amount owned by the several com- [1589] panies, I have no knowledge.

"I suppose that it might be assumed that the well-financed companies, with great resources, could go further in acquiring reserves than a lesser company, less

well-financed, smaller in volume of production and with less capable management.

"The changes in the industry have been very great. Thirty years ago reserve coal lands could be acquired, to justify the sinking and development of mines, at an average price of $2 per ton-year.

"Today, due to the increase in the cost of the operation of coal mines—running to power, supplies, machinery of all characters, wages, taxes—we must not forget that these corporations pay a 52-percent corporate tax and that they only enjoy the disposition of 48-percent of the money they make—which constitutes a burden of tax which I think should be reduced, in order to permit the economy to expand in a requisite manner to meet the obligations of our increasing population. What that ownership is in the various companies, I don't know and have no interest in it. But if the company is contemplating the erection of a plant capable of producing, say, 2,000 tons or 3,000 tons a day or more, depending on whether or not they utilize multiple shifts in the operation, their original investment is greater, to protect the life of that company; to insure that the revenues from the company on the investment thus fixed would be
[1590] adequate to amortize that company and liquidate the credit which has been curtailed through the erection of the plant.

"So of necessity we find all companies now undertaking to expand their production and faced with the problem of acquiring enough acres to justify the investment in the operating plant, the producing plant, and its various auxiliaries.

"So Mine Workers have no knowledge of the specific plans of companies small or large as to the amount of their reserves, or have nothing to do with justification

of their investment in those reserves. It is part of management's obligation.

"Q Mr. Lewis, has the union expended some of its funds for the purpose of tying up coal lands under union contract?

"A Any investment that the United Mine Workers may have made has all been in the interest of United Mine Workers of America and pursuant to declared and legal objectives.

"Q The 1958 contract, Mr. Lewis, brought in the protective wage clause, did it not?

"A If that was the date, yes."

MR. ROWNTREE: We'd like to read into the record that particular wage clause. I notice a copy of one here, here is Exhibit P124, we can use that.

[1591] MR. COMBS: Yes.

MR. ROWNTREE: "Protective wage clause.

"The United Mine Workers of America (which, as used in this Clause, includes all of its Districts, Local Unions, Officers, or Agents) and the Operators signatory hereto affirm their intention to maintain in the integrity of this contract in all of its parts. The objective of this contract is to provide the maximum possible continuity and stability of employment under the conditions set forth herein. The parties hereto agree that bituminous coal mines shall be so operated as to not to debase or lower the standards of wages, hours, safety requirements, and other conditions of work, established by this contract. The parties recognizing their obligation each to the other to exercise all possible efforts and means to attain these objectives further agree as follows:

"A. During the period of this contract, the United Mine Workers of America will not enter into, be a party to, nor will it permit any agreement or understanding

covering any wages, hours, or other conditions of work applicable to employees covered by this contract on any basis other than those specified in this contract or any applicable District Contract. The United Mine Workers of America will diligently perform and enforce without discrimination or favor the conditions of this paragraph and all other terms and conditions of this con-
[1592] tract and will use and exercise its continuing best efforts to obtain full compliance therewith by each and all of the parties signatory thereto.

"B. It is recognized that when signatory operators mine, prepare or procure or acquire under subcontract arrangements, bituminous coal mined under terms and conditions less favorable than those provided for in this contract, they deprive the employees of employment opportunities, employment conditions and other benefits which these employees are entitled to have safeguarded, stabilized and protected. Accordingly, the Operators agree that all bituminous coal mined, produced or prepared by them or any of them, or procured or acquired by them or any of them under a subcontract arrangement, shall be or shall have been mined or produced under terms and conditions which are as favorable to the employees as those provided for in this contract.

"'Procured or acquired under a subcontract arrangement' means any contract, lease, license, agreement, arrangement or understanding pursuant to which the signatory operator acquires coal, either as principal or agent, directly or indirectly from a producer other than such signatory for delivery to a person other than such signatory.

"The obligation assumed hereunder shall not affect any agreement in effect as of the date of execution of this contract: Provided, however, that any operator signatory

[1593] hereto who is a party to any agreement inconsistent with the obligations assumed hereunder shall not maintain such inconsistent agreement in effect beyond the first date at which such agreement may be terminated by him in accordance with its terms.

"The Operators signatory to this agreement shall so conduct their own operations (whether operated directly or indirectly, or through subsidiaries or affiliates) so as to fully comply with their obligations under this Clause. The obligation of each Operator signatory hereto, which is several and not joint, to fully perform all the conditions in this paragraph B contained, shall be a direct and continuing obligation of said Operator during the life of this Agreement.

"As a part of the consideration for this Agreement, the Operators signatory hereto agree that this Clause covered the operation of all the coal lands, coal producing or coal-preparation facilities owned or held under lease by them, or any of them, or by any subsidiary or affiliate at the date of this Agreement, or acquired during its terms which may hereafter (during the term of this Agreement) be put into production or use. Said Operators agree that they will not lease, license, or contract out any coal lands, coal producing or coal preparation facilities as a subterfuge for the purpose of avoiding the application of this Clause.

[1594] "C. There is hereby established a joint industry contract committee composed of six members, three of whom shall be appointed and may be removed from the Union and three of whom shall be appointed and may be removed by the Operators. Such appointments shall be made and notice thereof given to the proper parties hereto as expeditiously as possible and not later than 30 days after the date of the execution of this

contract."

And the rest of this has to do with the joint industry contract committee under this clause. That is as far as we care to read.

(The reading of the deposition was continued.)

"Q Did not, in general terms, this clause prohibit the signatory operator to buy or deal in coal produced by another operator who was not paying a scale of wages commensurate with the union contract scale?

"A It had nothing to do with the union. It was a question of substandard mines. And the operators stipulated that they would cease their buying of coal to be sold in the open market in competition with their own production, from substandard mines; mines that did not contain a standard of safety in accordance with the law made and provided, the state and federal laws, mines where substandard wages were paid.

"Q What would be substandard?

"A Mines that were substandard because [1595] of their whole structure and their inefficiency.

"Q What would be a substandard wage?

"A Any wage below the agreed wage or the going wage of the industry, as defined by Congress through the Walsh-Healey Act.

"Q Wasn't that tied pretty closely to the union scale as contained in the National Bituminous Coal Wage Agreement?

"A If the facts bore out with verisimilitude the various problems there, then and only then.

"Congress passed the bill, a minimum wage bill, and created a division of the Department of Labor to enforce it; and mines that pay less than the standard fixed by Congress; through the Labor Department Walsh-Healey administration, are in violation of the law, of course.

"Q I want to take up the Walsh-Healey a little bit later; but on this protective wage clause in the 1958 contract some of the operators did not want to sign that contract, did they?

"A As to that I can only say that whatever the sentiment was among the operators that the negotiating representatives executed the contract with that arrangement contained therein. As to the bickerings among the operators I couldn't testify as to those from my own knowledge.

"Q Some of the operators, under the pre-
[1596] vious contracts, were buying non-union coal, were they not?

"A Not non-union. Substandard coal.

"Q Well?

"A I wouldn't classify it as 'non-union.' Any substandard mine.

"Q Some of the operators were buying substandard coal?

"A It is so averred. It is public knowledge that that was the case.

"Q Now, some of these large coal companies had control of the big markets in the country?

"A Before you get to that, may I ask you to define 'large'?

"Q Talking about Consolidated Coal Company.

"A No. No. Give me a rule-of-thumb there. At what point does a company cease being 'small' in your estimation and become 'large'? Would it relate to production?

"Q I was trying to use a phrase similar to the expression you have used.

"A It isn't a 'phrase'—if I may be permitted to interject. It is a generality.

"Q At one time you used the name 'large combines'

and I would say any of the ten largest coal companies in the United States.

"A A production of what tonnage makes a
[1597] company 'large' in your estimation? Give me a rule-of-thumb by which I can be responsive to your interrogatory.

"Q A company that produces coal on the scale of West Kentucky Coal Company.

"A Generalities, again.

"Every company produces so much coal per annum. They have a rated capacity of so much. They may not attain that rating in their output. They produce what they can market—market and sell.

"At what point does a company cease being 'small' and become 'large'? How many tons?

"Q Mr. Lewis, you have stated that the tendency in the industry is to concentrate into fewer and fewer units of production and that the tendency to concentrate into these large combines is what the industry is bound to come to?

"A I disagree with that word 'bound', sir, in interpreting my position.

"I have pointed out the trend. I have pointed out and been specific about the progress in tons and in percentage during the years, the last 25 years.

"I have pointed out that the velocity of that change or the tempo of it has been increased in recent years.

"It is dormant now because of the depression and declining industry and the low level of industrial activity in that contract. So that corporations that in the nature of things one would assume would grow in their
[1598] output and in their general dimensions by withholding affirmative action on the expansion question until they find out whether their cash reserves and

equivalent will be sufficient to tide them through a depression the length of which they cannot now determine.

"I have been most explicit about those things. I do not want to deal in generalities that fit only the company that you may have in mind, and not be advised of what companies you have in mind with the exception of naming a half dozen coal companies that come easily to the end of your tongue.

"The witness is asking for fairplay on this proposition.

"Q Are not these companies that I have named the ones that are following this tendency?

"A They are among those.

"Q Let me finish my question, Mr. Lewis. Of buying other companies and forming themselves into these large combines. And I make specific reference to the acquisition by Consolidated Coal Company of Pocahontas Fuel Company. The acquisition by Peabody Coal Company of a number of other coal companies. The acquisition of the Pittston Company of the Clintsfield Company. The acquisition by West Kentucky Coal Company of the Nashville Coal Company.

[1599] "Now, these companies are the ones, are they not, that are following this tendency of binding up large combines to take over the production of coal in this country; are they not?

"A They are among those who are doing that. This witness did not use the word 'combines,' because this witness believes that combines, in the sense of ordinary usage of the term, do not exist in the coal industry.

"Q I am talking now about the speech, Mr. Lewis, at the 1958 convention, page 310, the first full paragraph on that page:

"'These great combines now being formed in the industr

"MR. COMBS: He went through all that.

"Q And I ask you are not these companies that I have named, these 'large combines' that you are referring to there or these are the kind of combines that you are talking about?

"A This witness used the word 'combine' in that address in relation to the mergers in the country, the consolidations of coal companies; and in other sections of various public addresses in this record, and elsewhere, this witness has pointed out the advantages to the public interest in these mergers and has defined specifically the advantages which would affect the modern process [1600] of mining coal for public use.

"Q Is it not true, Mr. Lewis, that the union has conducted campaigns against some of the large consumers of coal to drive them into buying coal from signatory operators under the union contract?

"A Can you be more specific in identification?

"Q Yes, sir. I refer to pages 376 through 378 and also page 380 of the 1956 convention minutes. This is upon the question of the resolution and aid of petitioners committee. Page 376 is where that resolution starts.

"'This resolution is with respect to accommodation of the Pensioners' Committee which was sponsoring the effort to get West Penn Electric Company to buy union coal for its Monongahela power plant, and with respect to this matter President Lewis states at page 380:

"'The mining industry in western Pennsylvania northern West Virginia and eastern Ohio are among the principal customers of this great power combination. The coal operators find themselves without influence in this situation, although they would like to sell their coal to this company at a price that could yield them a return on their investment because they fear that this great concern would withdraw its patronage from any coal company that objected to their policy of buying non-union coal that

pauperizes the community where their power plants are located.

[1601] "'We have had conferences with this company before. They are arrogant in their power;' and so forth.

"Down to the last full paragraph.

"'I want to assure the West Penn Power Company that the day when they continue to follow that policy is rapidly passing, and that within a very short length of time the West Penn Power Company and its directors, with investments in many business institutions of the American economy, will be required to pay for coal at their coal barge plants, or at any other plant they have a price which will enable men to live.'

"A The answer to your question, as phrased by you, is no. We have not attempted at any time to draw these consumers into using coal produced under the wage agreement.

"If you want to change the word 'drive' to 'induce,' then I would say we have tried to induce the patronage by these companies, in the coal that they consume in their varied operations, of mines where coal is produced under American standards and in accordance with the American concepts; namely, paying the going wage rate, the recognized rate in the mining industry.

"It is true that we have sought to induce them to do so.

"It gets you right down to TVA, a governmental agency, whom we have tried to induce to purchase coal

[1602] mined under the standards of the American taxpayer whose money they use in the operation of this vast edifice.

"Q Is it not true that the United Mine Workers of America have acquired stock in Tampa Electric Company, Kansas City Power and Light Company, Cleveland Illum-

inating Company?

"A I think you have a record given by competent agents of the union.

"Q And also Union Electric. Yes, we happen to have a record.

"A Well, you have the answer.

"Q Yes. Now, turning to Tennessee Valley Authority. This is a United States Government operation; that's right, isn't it?

"A It is. And the average citizen so assumes and so do I. If you want verification, why"——

* * *

[1609] THE COURT: Well, gentlemen, it is obvious from the Pennington case that any evidence of efforts to influence any government official, either under the Walsh-Healey Act or any other government official in the adoption of policies and programs and conduct of activities of government, could not be the basis of the violation of the Antitrust Act, nor could it form the basis for the award of any damages.

It is not altogether clear to the Court just what the opinion holds with regard to any possible reason for receiving the evidence or any possible consideration that might be given to that evidence.

I think the proper thing for the Court to do here is to reserve a decision upon this, allow you, if you desire, to place it in the record but to reserve a decision upon this, then make a determination afterwards as to whether this evidence could be received for any purpose. It is obvious the reason it cannot be received but whether it can be received for any purpose is not clear to the Court at this time.

MR. COMBS: In order not to be interrupting counsel, may I have a continuing objection as to any evidence

[1610] concerning or relating to Walsh-Healey minimum wage or the TVA-Walsh-Healey?

THE COURT: Yes.

MR. ROWNTREE: We start on 456.

(Thereupon, Mr. Rowntree read the questions and Mr. Chambliss the answers.)

## JOHN L. LEWIS

(The reading of the deposition was continued.)

"Q Mr. Lewis, some of the large coal companies—particularly Consolidation Coal Company and Pocahontas Fuel Company—participated in proceedings with the union whereby the Secretary of Labor made a first determination of a minimum wage in the bituminous coal industry; is that not right?

"A That is correct."

"MR. ROWNTREE: We refer at this point to Page 56 of the 1956 minutes. Before doing that, I omitted the United Mine Workers Journal of February 15, 1955, Pages 4 and 10. I think we had better introduce that one as an exhibit."

MR. ROWNTREE: We will merely quote from that, and this is quoting from that UMW Journal of February 15, 1955.

"'Lewis calls for halt to U. S. purchase of "dog-hole" coal; asks minimum wage.

[1611] "'The UMW and major soft coal producers quarter-backed by President John L. Lewis of the International Union have called on Secretary of Labor James P. Mitchell to promulgate a prevailing minimum wage for the bituminous coal industry to prevent 'dog-hole' non-union operators from doing a "push-cart" business with government agencies at cut-rate prices that undermine the economic stability of America's basic

fuel industry.

"'In addition to the International Union, the petitioners asking for the wage declaration under the provisions of the Walsh-Healey Public Contracts Acts are the Pittsburgh Consolidated Coal Company, largest commercial producer of soft coal in the nation, and the Pocahontas Fuel Company, Inc., one of the largest of the Southern Companies.

"'Public hearings on the matter got underway February 1 in the auditorium of the National Museum of National History in Washington. Conducting the hearings for the Secretary of Labor is Hearing Examiner Clifford Grant.

"'Appearing on behalf of the UMW in addition to President Lewis, are Secretary-Treasurer John Owens, and W. A. (Tony) Boyle, Special Assistant to President Lewis and President of District 27. Other witnesses who appeared in support of the petition were George A. Lamb, Manager of Business Surveys for the Pittsburgh Consolidated Coal Company and Hugh R. Hawthorne,

[1612] General Counsel and Director of the Pocahontas Fuel Company, Inc.

"'The UMWA's legal representative was.'" I think Mr. Harrison Combs was named at that point.

"'The petitioners feel, in requesting this affirmative action by the Secretary of Labor, endowed with authority under the statute, that they are in harmony with the declared intent of the law as uttered by the Congress and that they are in harmony with the conclusive findings of the Supreme Court of the United States as to what the Act was intended to do and the effective administration of its provisions. One governmental agency, to wit, the Tennessee Valley Authority, has been a tremendous offender against the declared purposes of the Act and in the purchasing of the coal requirements for that great enter-

prise has consistently violated the spirit of the Act in all their business transactions.

"'The Board of Directors of TVA could say legalistically that there has been no legal promulgation of a prevailing minimum wage under the provisions of the statute in the bituminous coal industry. However, there has been no estoppel against the Tennessee Valley Authority putting into practice the standards set forth in the Act as affirmed by Congress and interpreted by the Supreme Court without the necessity of awaiting a promul
[1613] gation of a minimum wage by the Secretary of Labor.

"'The TVA, which purchased something more than 8 million tons of coal in fiscal 1954, has done so at starvation prices. They have used the vast influence of their heavy purchases to beat down small isolated producing units to a starvation wage, ignoring safety standards and health conditions, taxes, compensation obligations, etc., and after having established such standards, based on starvation, they have asked the stable investment of the industry, operating modern mines under standard conditions with collective bargaining in the American way to meet the intolerable and unjustifiable prices in order that TVA, a government agency, presumably bound by the law as well as every other natural citizen and artificial citizen, might make a better showing on its financial records in competition with free enterprise industries producing electrical power in the United States.

"'That agency has ignored every humane consideration, every standard of ethics, and the provisions of every paragraph of the Walsh-Healey statute in carrying out its push-cart policy providing itself with coal. They seek to turn the economic structure of the United States back to the push-cart days.'"

MR. COMBS: May it please the Court, I would like to comment on that article that he read just briefly. I commented in the case as it was read. This
[1614] article from the Journal that counsel quotes from was written by Justin McCarthy and Rex Lauck and is signed by them as the editor and assistant editor. They were writing the article and on the same date on the left-hand corner of the same Journal is Mr. Lewis' statement to the secretary, which is the official statement.

What counsel was reading was a narrative on the part of the editor and the assistant editor of the Journal. That is just for explanation, it was not reading from Mr. Lewis' statement, although the statement was there. This is a comment of the editor, this is editorializing on Mr. Lewis' statement.

MR. ROWNTREE: Counsel is not objecting to the competency?

MR. COMBS: No, it's just a word of explanation that the record appears to show that he is quoting from Mr. Lewis and he is not quoting from Mr. Lewis, he is quoting from an editorial on Mr. Lewis' statement.

MR. ROWNTREE: Well, I didn't mean to indicate this was Mr. Lewis' words, this is just the Journal editorial. We skip to the bottom of page 470. Referring to a United Mine Worker Journal of February 15, 1958, pages 5 and 6. This has to do, your Honor, with an amendment to the Walsh-Healey minimum wage in 1958 and the efforts that led to that, an increase in the mini-
mum wage under Walsh-Healey in the bituminous
[1615] coal industry in 1958. This is an article in the United Mine Workers Journal of February 15, 1958, headed "Labor Department Holds Walsh-Healey Hearing.

"This is in 1958 and I might say, this is a second hearing on this question.

"'The UMWA, Pittsburgh Consolidation Coal Company and other coal producing companies made their formal plea to the U. S. Department of Labor for increased minimum wages in the bituminous coal industry under provisions of the Walsh-Healey Act. That Act required that coal operators selling to agencies of the U. S. Government under contracts in excess of $10,000 must pay prescribed minimum wages laid down by the Labor Department for the geographically area in which their mines are located.

"'The UMWA and the operators stated their case at a hearing on February 3-5 presided over by Hearing Examiner Clifford Grant, the same man who heard an earlier case which resulted in a minimum wage determination by Secretary of Labor James P. Mitchell in 1955.

"'The hearing was scheduled as a result of a petition late last year in which the union and the operators asked that the minimum wages be redetermined to take into account the two wage increases negotiated by the UMWA since Mitchell's 1955 determination. Each of the two National Bituminous Coal Wage Agreements signed [1616] in 1955 and 1956 call for pay boosts of two dollars a day—a total of four dollars a day, or 50 cents an hour.

"'Spokesman for the UMWA—and the man who presented the weightiest evidence in the case—was W. A. (Tony) Boyle, International Board Member for District 27 and Special Assistant to President John L. Lewis.'

"The fourth paragraph.

"'Chief witness for the unionized coal industry was George A. Lamb, Manager of Business Surveys, Pittsburgh Consolidation Coal Company. He was quizzed on direct examination by Frank R. Amos, Retired General Counsel of Pitt Consol, who represented Pitt Consol during the 1955 wage determination, both in the Labor Department and in its long haul through Federal Courts.

and acted as the chief legal spokesman for the operators.

"'Lamb, who was also a key witness in 1955, backed up Boyle's testimony. He also stated that in 1957 his company produced about 40 million tons of coal, of which only 310,000 tons were sold directly to the Federal Government. He blamed this on the wage advantage of at least 50 cents an hour enjoyed by non-union operators and added "the greater part of the bituminous coal industry will be damaged" if the higher prevailing wages are not put into effect.'

"Skipping one paragraph.

"'Among the other operators' witnesses who favored
[1617] the increased wage rates was Frank J. Foresman, Director of Industrial Relations, Pittsburgh and Midway Coal Mining Company (Kansas), who preceded UMWA Safety Director Charles Ferguson as head of the coal mine section of the National Safety Council.'

"Down to the last line, last paragraph, beginning at the bottom.

"'Another operator witness was G. M. Davidson of Island Creek Coal Company.'"

MR. ROWNTREE: We want to read the rest of that paragraph.

"He said that Island Creek operates 19 mines, six located in Guffey District 7 (Southern No. 1) and 13 in Guffey District 8 (Southern No. 2). In 1956, Davidson testified Island Creek produced 14,792,405 tons of coal of which only 272,008 tons were sold to the United States Government. None was sold to the Tennessee Valley Authority although Island Creek operates in TVA territory.

"Davidson said the lack of government business was due to the wage advantage enjoyed by non-union operators and added that it was his conviction that the UMWA wage scale was the prevailing wage in Guffey Districts 7 and 8."

MR. COMBS: If the Court please, what counsel is reading from, I take it you are going to offer that as an exhibit?

[1618] MR. ROWNTREE: I see no reason to offer it, if you want to.

MR. COMBS: Yes, I'd like to offer it for this reason, this is a descriptive article appearing in the Journal and it describes and it shows the exhibit itself in addition to the named operators that he commented on there that there were several more operators appearing in favor of the amendment to the prevailing wage and it also shows that at least two persons appeared in opposition and there was a narrative of the hearing that was held by the Secretary and this exhibit shows that and I think that the entire exhibit should be admitted or submitted.

(The article referred to above was marked P139 and received in evidence.)

(The reading of the deposition was continued.)

"Q Well, you were aware, were you not, that there was a $10,000 provision in the Walsh-Healey Act?

"A Yes.

"Q Which specified the contracts costing less than $10,000 would not come under the minimum wage requirement?

"A Yes.

"MR. ROWNTREE: We refer here to the 1956 minutes, Page 13, in the middle of the paragraph."

This is Mr. Lewis at the convention in 1956.

MR. COMBS: All right.

[1619] (The reading of the deposition was continued.)

"'You will recall that our organization and certain coal companies petitioned the Secretary of Labor to establish a minimum wage scale in our industry. And

after a year of testimony and examination and so forth, the Department of Labor did promulgate that scale and fixed the scale at whatever the contract rate is in that district. That is the minimum wage in the coal industry. The Tennessee Valley Authority gets around that law now, to which they are obligated to adhere because they are a government agency operating under a government name, by finding a clause that says that the minimum rate schedules do not apply to contracts for less than $10,000 in amount. So, wherever they can find a non-union operator willing to sell his coal for less than the organized mines under agreement, they will call him and they will give him as much as five, six, seven or ten $1,000 contracts in one, two or three days—a clear evasion of the law, a clear conspiracy to evade the law on the part of the governmental agency. Yet up to this time this agency has not been told, either by the Congress or the Executive, to follow the proclaimed public policy of the United States and buy coal from mines that pay the industry wage and from operators who invest their money under the free enterprise system and expect to have a return on their investment. It is anti-social, it is un-American.

[1620] It contemptible double-dealing on the part of the Tennessee Valley Authority."

"Q With reference to that paragraph, Mr. Lewis, did the union make any effort to change the policy of TVA with respect to purchasing coal on these contracts for less than $10,000?

"A It is possible that in some of the conferences as held by representatives of the union that question may have been raised and a viewpoint expressed on that. I have no personal knowledge.

"Q Do you recall if Mr. Widman attended any such conferences?

"A He attended various meetings with the TVA executives.

"Q Mr. Lewis, the union has attempted, has it not, to sell the membership on the idea of mechanization in the bituminous coal industry?

"A I think not. I think the union has not undertaken to 'sell' the membership anything. I dislike that Madison Avenue term in all its aspects.

"The union officers have reported from time to time to the membership on the question of mechanization and it has been policy for many years not to oppose mechanization but to demand from the industry a participation in the advantages of mechanization.

[1621] "We hold that God did not put in the mind of a genius an idea to increase production per man day for the sole benefit of some coal operators or a group of coal operators; that the advantages inherent in the progress of this economy should be on a basis where all interests concerned have a participation in the advantages.

"We hold also, in the Tennessee Valley Authority matter, that Congress did a disservice to that percentage of citizenship who are denied the protection of the Federal Safety Act because they were employed in mines having less than 15 employees; and we hold that the citizens, before the law, however engaged or employed or occupied, are entitled to equality of protection under the law.

"We hold also that the $10,000 exclusion arrangement to which you refer, in contracts, made it possible for a purveyor of substandard coal to pyramid his $10,000 contracts and render abortive the Act of Congress as appertaining to that volume of tonnage.

"We held it was wrong and that redress should be given; and that the Tennessee Valley should carry out the intent of Congress in passing the Act."

MR. ROWNTREE: At the bottom of the page we offer as the next exhibit a United Mine Workers Journal.

MR. COMBS: Counsel has indicated to us heretofore that he expected to read more in that record.

[1622] If he doesn't read it I want to read it.

MR. ROWNTREE: All right. We will read it.

(The reading of the deposition was continued.)

"Q Would not the elimination of that policy of TVA with respect to these small contracts bar the small coal operator from participating in the Tennessee Valley market, he having previously been barred by the minimum wage in the bituminous coal industry from selling on the larger term contracts?

"A Not necessarily. It would depend on the individual circumstances attendant upon his mining problems and his marketing problems.

"Be it known and recognized that, under the current agreement in the industry, there are thousands of unit signatories in this category of small mines who are paying the wages and fulfilling the contract in every particular, and maintaining proper safety standards.

"The question of why those who don't do it do not do likewise is something upon which I have no knowledge.

"It is my own concept and my own opinion that the fact that a mine is small does not necessarily, under efficient management, always bar that mine from paying only a substandard price or maintaining substandard conditions in the mine."

MR. ROWNTREE: Here we offer the UMW

[1623] Journal of December 1, 1958, Page 7. A poor picture we have got here. I think I ought to save these and read the material in the back and introduce these several pages at one time.

"This has a picture on it with the legend under the picture: 'Big Paul—this is 'Big Paul, the King of Spades', now working at the Peabody Coal Company's New River King Mine near Freeburg, Illinois. It is believed to be

the largest stripping shovel in the world. Big Paul's dipper can be filled with 105 tons of overburden (enough to fill two railroad cars), transport the load about a city block away and dump it on a bank almost 100 feet high. Big Paul is operated by one man, who rises to his third-floor operating cab by electric elevator. It is about 100 times the size of an ordinary power shovel. It uses more than half a mile of wire rope in operation. It could fill a freight train 175 miles long in one month. It has as much horsepower as the largest ocean freighter and uses as much electricity (coal-by-wire) as the homes and industries in a town of 10,000 persons. Big Paul can fill its dipper up a bank as high as a 12-story building and dump it on top of a bank the height of a 10-story building a city block away. It is the first of three such shovels to be used by Peabody. It is a symbol of the dynamic technological progress of the American coal industry.'"

MR. COMBS: If your Honor please, we
[1624] objected rather strenuously to this exhibit and I take it that counsel is not talking about Walsh-Healey now.

MR. ROWNTREE: No

MR. COMBS: This is a field of mechanization that the union conspired with the operator on the mechanization problem and it's on the problem of mechanization and we submit it has no relevancy how big or how small the shovel is. We had quite an argument on that and we do object to the introduction of this exhibit in the testimony.

MR. ROWNTREE: We are going into some of the mechanization of competitors in the TVA market other than local industry, including these plaintiffs, who are direct competitors, these people who were asked to sign the identical wage contract that these people were required

to sign.

MR. COMBS: I might point out to the Court that he is talking about 1958. Now, his own testimony here shows some rather advanced techniques in mining among his own plaintiffs. If he can reconcile the two I fail to follow him because he got into finances, how much it cost and how big it was, how little, I don't know where his line of demarcation on the degree is going.

Now, if the picture of the 1958 shovel of these dimensions can throw any light on this problem I fail to see it and we object to it.

[1625] THE COURT: I believe I will overrule the objection.

(The article referred to above was marked P140 and received in evidence.)

MR. ROWNTREE: This is on Page 478.

"We put in as our next exhibit United Mine Workers Journal, November 1, 1959, Pages 1 and 3. I believe that Page 18 is also in that exhibit."

MR. COMBS: We have the same objection to that one.

MR. ROWNTREE: "This is an article 'Coal's Present and Future Look.' Reading the left-hand column—this also has a picture on Page 3 here of one of those continuous mining machines that is spoken of in this record several times.

"'Mining bituminous coal in the Northern West Virginia fields—in the rich Pittsburgh Seam to be more specific—is "like taking candy from a baby." Both are comparatively effortless.

"'That was the simple analogy to be drawn following a personal visit to one of the world's most modern coal production facilities—the 20-million dollar Loveridge Mine and preparation plant of the Mountaineer Coal Com-

pany, a Division of Consolidation Coal Company, located near here.'"

The Pittsburgh Consolidation was later changed to Consolidation by name.

"'The extraction with ease of one of this [1626] nation's vital minerals has been achieved through the adaptation of technological advances by Consol in the ever-expanding program of modernizing at a cost of close to 200 million dollars since 1947.'"

We repeated that quotation over on Page 484, down to the middle of the page.

"'Development of the Loveridge Mine in a completely virgin coal area covering approximately 12,000 acres of the Pittsburgh Seam will yield about 90 million tons of coal, assuring 30 years of production at the rate of 3 million tons annually These figures are based on reserved presently allocated to Loveridge but which could be extended.

"'Consol's overall reserves in the northern part of this state covers six counties and total more than 1.3 billion tons of recoverable coal. These reserves alone assure an adequate supply for the next hundred years based on present day production rates.

"'In its vast network of operations, Consol operates 33 mines in five states—Pennsylvania, Ohio, Tennessee, Virginia and West Virginia—with 21 of the mines having a potential annual productive capacity in excess of one million tons.'"

Skipping a paragraph.

"'In the mining of the Pittsburgh Seam, which has been described as 'the most valuable mine deposit in [1627] the world,' Consol has developed complete mechanization of its underground facilities at its Loveridge Mine.

"'Here, deep in the mountainous region of the state,

all coal is mined by teams of trackless borer-type continuous mining machines. These machines are capable of advancing a face 13 feet wide and 7 feet high at the rate of 60 feet an hour.

"'The productive capacity of one of these machines, operating under normal conditions in the Pittsburgh Seam, can reach 1,000 tons per 8-hour shift, according to a spokesman of the company.

"'While the continuous miner gouges and bites out the coal, tractor-mounted loading machine operate behind it and with gathering arms sweep up the coal and empty it by conveyor into 7-ton capacity shuttle cars.

"'These shuttle cars, traveling at the rate of 350 feet per minute, deliver the raw coal to an extensible belt conveyor which pours it into 20-ton mine cars which transport it to the surface.

"'While mining goes on underground at Loveridge the company has the most up-to-the-minute ventilating system in operation at all times, for the protection of life and property.'"

MR. COMBS: Just a word of explanation, if it please the Court. What counsel was reading was taken
[1628] from the article in the Mine Workers Journal by a Journal correspondent, who it was written by, and it has a date line on it of Fairview, West Virginia, and the article goes on for two pages and describes mostly the coal mining operation in West Virginia by units of Consolidation Coal Company.

On the same page there is an article written by George J. Curilla, Jr., Journal Correspondent, with a date line of Fairmont, West Virginia, and covers basically the same subject on the future of coal mining.

This was simply a newspaper writing these articles and the Journal printed them.

MR. ROWNTREE: Well, do you object to them?

MR. COMBS: We don't object to them, it's simply a word of explanation to the Court.

MR. ROWNTREE: Referring to the United Mine Workers Journal of December 1, 1959, Pages 14 and 15.

"Statement of Joseph P. Routh, President of Pittston Company, in the third paragraph.

"'In 1953, our coal division produced 50.3 per cent of our net income. Our trucking and warehousing division produced 19.9 per cent, and our oil division 21.2 per cent, the rest being in miscellaneous income. Our coal division percentage, of course is off so far this year due to the steel strike, but nevertheless bituminous coal is our most important division and thus I will discuss this phase of our business first.

[1629] "'Our coal division is made up of the following operating companies: Clinchfield Coal Company Division, Elk River Coal and Lumber Company, Amigo Smokless Coal Company, Lillybrook Coal Company.

"'The Clinchfield Coal Company Division, which is the most important, operates modern coal mines in Virginia, Northern West Virginia and Tennessee. Our Clinchfield properties in Southwest Virginia encompass the ownership of the mineral rights in approximately 300,000 acres with an estimated billion tons of coal reserves. This we believe to be the largest single block of coal under one ownership east of the Mississippi if not in the entire country.'

"Skipping one paragraph.

"'I am sure that most of you have heard about our great new Moss No. 3 Mine, which was dedicated on November 18, 1958, and will be completed in the early part of 1960 at a cost of approximately $50,000,000. This mine of tomorrow, when finished, we are confident will be the finest bituminous coal mine in the world.

It will produce approximately 45 tons per man per day as against the average in this country of a little over 11 tons per man per day and 1.5 tons per man per day in Europe and also in Russia. Its cleaning plant resembles a huge factory and cleans, dries and sizes 25,000 tons of coal per day automatically with pushbutton
[1630] controls. This plant, equipped with the most modern automatic and electronic devices, compares with the great modern manufacturing plants of America. This mine is now running at approximately 60 per cent of capacity due to delays in completion caused by the steel strike. However, it is already producing up to 30 tons per man per day, and its cost per ton are fully up to our expectations. Our Moss No. 3 Mine, when finished, will produce 6 million tons of coal annually, of which approximately 1.25 million tons are under long term contract to the new utility plant of the American Electric Power Company, that has been built close by this mine.'"

MR. COMBS: If the Court please, as a matter of explanation, this is a reprint of part of the remarks made by Mr. George Routh. Mr. Routh is chairman of the Board and president of the Pittston Company. Pittston Company is the parent company of the Clinchfield Coal Company.

These remarks were made before the New York Society of Security Analysts. It concerns the coal producing activities of the company, his remarks addressed to that, and he read excerpts from the remarks to these Security Analysts that covers two pages.

Now, we have an objection to this type of evidence, that unless a conspiracy was formed I can't see any evidence in there, it's not admissible.
[1631] I don't object to that particular evidence but I do want to explain to the Court what it is.

MR. ROWNTREE: Of course, our purpose in offering this type of proof is to show the circumstances surrounding the reasonableness of offering one contract and one contract alone to the other bargaining units in the industry whereas the circumstances in these other bargaining units are quite different with respect to the effect of increases of labor costs in the mining of coal. Of course, that is why we offer it, we offer it because we think it has a very pertinent purpose and effect describing these surrounding circumstances.

* * *

[1634] "Mr. Lewis, do you recall that in 1959 the Landrum-Griffin Act was passed which required the filing of financial reports by unions?

"A I, of course, have had knowledge of the [1635] presence of the Act of Congress.

"Q And the United Mine Workers did file a report under that Act?

"Now, Mr. Lewis, in dealing with the funds and the assets of the International Union, the International officers of the union acted in a fiduciary capacity, did they not?

"A Depending on what interpretation you put on the word 'fiduciary.'

"Q Did they not act in the nature of trustees of the funds?

"A That's right.

"Q Do you recall that many of these transactions involving the union funds, the particular transactions with Mr. Colton of the National Bank of Washington, and Mr. Cyrus Eaton—in each instance the notes which represented the transactions contained a provision that the individual to whom the funds were advanced could surrender the collateral which had been put up with the union and

relieve himself of personal liability for the balance due on that note?

"A That's right.

"Q Now, Mr. Lewis, don't you think that was sort of a Heads-I-loose-Tails-you-win proposition?

"A No, sir.

"Q Well, will you explain that?

[1636] "A It was simply a common sense arrangement and there was no desire on the part of the Mine Workers, those gentlemen acting in the individual case, to load them with a personal liability at a time of personal stress to themselves when they would be compelled to take the loss because of the market price on those securities.

"The values of those securities are their intrinsic value; and the trustees were perfectly well-satisfied with their knowledge of the future value of those securities and were not concerned with fluctuations in the market price because there was no intent to make a profit on the securities by selling them. If it were so we could easily have profited because the stock advanced around 40 on the market, for West Kentucky, after acquisition of these shares."

MR. ROWNTREE: Mr. Kramer points out, "In the use of the word 'trustees' as you have used it here, you are not using it with reference to the Welfare Fund at all.

"THE WITNESS: Oh, no."

"Q Mr. Lewis, the rise of that West Kentucky stock to a price of 40, was that not immediately after the acquisition of that large block of shares?

"A I do not recall the exact period of time that elapsed before the rise came.

"Q Did not that stock decline in value then

[1637] down to a range of ten or twelve dollars per share?

"A On the market, yes. But that is not the value of the stock in the mines of the trustees, and we are not concerned with the market price at the current time.

"Q Does not the value of the coal properties depend upon the ability to sell the coal?

"A Only the current value is all.

"Q And the ultimate would be dependent upon the ability in the future to take over the market, insuring the ability to sell the coal?

"A No, not in any sense of the word.

"Q Is it not true that a buyer of coal lands in coal mining plants would be interested in the salability of the coal on those lands? Isn't that a major part of the analysis of value that a buyer would make?

"A You are asking me to define the intent and the purposes and opinions of people who invest in coal mines and whether or not they would not be concerned.

"There is no rule by which one can judge those things because much acreage of coal lands is purchased not for exploitation but to preserve the continuity of operations for that company in the future, the future value. The length of its life makes the investment more valuable.

"I can recall when the United States Steel Corporation had investments in coal lands that they did not
[1638] expect to use in less than 100 years. A hundred years more reserve supply of metallurgical coal.

"I do not know that they now have such outstanding reserves. Time has made changes.

"I know of operating coal companies now, and I know of railroads, and I know of land companies that have in their possession vast acreages of reserve coal lands that possibly will not be exploited or mined in the next 50 or 75 years.

"So the answer is no. It is not necessarily concerned

with current practice or current salability of tonnage of coal.

"Q But in the future prospect of a market being available for the sale of coal would be a strong question on the value of those coal properties, would it not?

"A I wouldn't think so, necessarily; because no one buys coal lands or invests in the erection of mining units, under current conditions, solely with regard to the present price of coal in the market or the volume of demand. He is building for a long time, of necessity.

"I know a railroad that has over a half million acres of undeveloped coal lands that pays taxes on those lands year after year and charges them up to the gross cost of operating the railroad.

"There is no uniform method of conducting [1639] the business of the corporation.

"Q Are these companies that you refer to interested in acquiring these great tracts of coal land because the available coal lands in the country have become scarce?

"A Because what?

"Q Because the available lands containing marketable coal have become rather scarce?

"A I wouldn't know on that, as an abstract question.

"Certainly the country has vast coal reserves. Coal is our most valuable national asset.

"When oil wells run dry and gas wells fail, there will still be coal, convertible into gas and convertible into oil, convertible into many other things. And I think that our shortage of coal, generally speaking—steam coal—would probably cover our requirements for 2,000 years at the present rate of consumption.

"That is not true with regard to metallurgical coal. There is a limited acreage of that in the United States. It is being consumed faster and utilized more for coal.

"Much of our export coal is metallurgical coal.

"But from a commercial, competitive standpoint it costs too much. Progress may be made in the future. I think some experiments are taking place now. Dow Chemical is going to take a half-million gallons a day on a project now out on the Gulf Coast, for which
[1640] they will pay 30 cents a thousand gallons, while the domestic consumers in the cities affected will pay 20 cents.

"There is the element of cost, and each enterprise that needs water in large quantities makes the choice of what they will do.

"The same way with regard to metallurgical coal.

"We have the lignite reserves. We have the subbituminous reserves and the bituminous. The metallurgical. The high and low volatile. And we have semi-anthracite in the Western areas and we have anthracite in Pennsylvania. Those are the gradations in the types of coal. Each has its purpose. Each is utilized according to the needs of the economy and the rules governing from the standpoint of cost in the operation of any business.

"Q Mr. Lewis, has the United Mine Workers of America been satisfied with the management of West Kentucky Coal Company and the Nashville Coal Company since the union acquired stock in those companies?

"A I could not express that in the terms of 'being satisfied' or 'dissatisfied.' The United Mine Workers of America had nothing to do with the management of West Kentucky Coal Company. In no sense of the word. In the past or now. The same as with all other companies in the industry.

"We decline to assume the obligations of
[1641] management; and the operators have always helped us in that declination and have proudly

proclaimed that they owned the properties and would do as they pleased. And we have helped them to do that. Sometimes to their disadvantage.

"Q But the union has invested millions of dollars in those properties and has assumed the position of an owner or partial owner of those companies; is that not true?

"A The union holds some securities and investments in West Kentucky Coal Company; and like our investments—the trustees of the United Mine Workers—in other units of American industry, we do not undertake to assume the responsibilities of management in any way.

"Our private opinions of the efficiency of this manager or that manager in the industry is independent and separate and apart and has nothing to do with the policy of the United Mine Workers.

"Conceivably when one knows the record of an operating man in the industry in any company, one subconsciously forms an opinion as to his ability or his accomplishments; and those opinions are of no value to anybody and are not publicly uttered or privately uttered by representatives of the United Mine Workers because we have no reason to try to prejudice the position of any man in any position in industry. It is a common sense policy.

"Q The International officers of the union, [1642] as trustees of union funds, would have an obligation to check upon and to pass upon and to take steps when need be, to preserve the assets in which they had invested union funds; is that not true?

"A Sir, I have a full appreciation of the obligations of the trustees acting in a fiduciary capacity.

"It has been my lot to be a trustee in a number of instances. I have an understanding of the obligations placed upon fiduciary trustees under the law and the

statutes made and provided. And all those things are taken into consideration when the trustees exercise their judgment.

"The trustees of the United Mine Workers are satisfied with the investment in the West Kentucky Coal Company and are quite content in the belief that, in the end, it will prove to be immensely profitable to the United Mine Workers of America in a financial sense; a wise investment of the funds."

MR. ROWNTREE: We complete the deposition.

MR. COMBS: The cross-examination is short. I'd like to read it at this time, if it is all right with counsel.

THE COURT: All right.

MR. ROWNTREE: Can he read the responses?

MR. COMBS: All right.

CROSS-EXAMINATION

(Thereupon, Mr. Combs read the questions and Mr. Chambliss the answers.)

[1643] "Q Mr. Lewis, counsel has asked whether or not the union has been aided in its organizing drives by certain big operators. They have submitted for the record here certain excerpts from the Journal and different publications with reference to the acquisition of the Elk River Coal Company by the Pittston Company; the acquisition by the Peabody Coal Company of the St. Ellen and Millstadt Mines; and the purchase of certain stock by the United Mine Workers in West Kentucky.

"I will ask you whether or not there was any understanding between you and any of these operators at any time or whether there was any concerted agreement that these companies would acquire these mines for the purpose of helping in these organizing drives?

"A No.

"Q Now with reference to the question of the policy of the United Mine Workers over the years to demand equal pay for equal services and to secure a minimum uniform wage, I will ask you whether or not—from your experience as at one time the president of the CIO for many years, and as an officer and official of the American Federation of Labor for many years—whether or not this same policy or another policy exists in those labor organizations concerning a minimum wage for [1644] equal service?

"A To my knowledge, practically every organization in the CIO and the American Federation of Labor, and in many so-called independent unions, were unanimous in their opinion on that subject and were proponents of the idea; and they sought its passage by Congress in every proper way. And I personally have testified at some length before committees of Congress, urging the enactment of the minimum wage law in the United States, which finally was enacted in the form of the Walsh-Healey bill.

"So Congress enacted the law and, in the opinion of this witness, it is an absolute and unqualified right on the part of any citizen to avail himself of the protection and privileges of an act passed by the Congress of the United States, which is what we undertook to do for the mining interests.

"Q For the purposes of the record, Mr. Lewis, how long were you connected with the CIO, officially?

"A Two years of preparation antecedent to its formation; five years as president. I left it with five million members and a balanced budget for the preceding year.

"Q Now, did you hold certain official positions in the American Federation of Labor and how long?

"A It varied at different times. I was one of the

vice presidents of the American Federation of Labor and a member of the Executive Board.

[1645] "Q And from your experience, based on this experience, you are familiar with the objectives of the labor movement in general on this uniform wage scale?

"A I so believe."

* * *

[1668] MR. ROWNTREE: The deposition of George H. Love, a witness called by the plaintiffs at Pittsburgh, Pennsylvania, November 29, 1960.

## GEORGE H. LOVE

### DIRECT EXAMINATION

"Q What is your name, sir?

"A George H. Love.

"Q Where do you reside, Mr. Love?

"A Pittsburgh, Pennsylvania.

"Q What position do you hold?

"A I am Chairman of the Board of Consolidation Coal Company.

"Q How long have you held that position?

"A I believe I became chairman at the end of '56 or the very beginning of 1957.

"Q What was your office before that?

"A President.

"Q And how long had you been president?

"A This company was formed the very end of 1945, and from that time on, I have been president.

"Q Do you hold any office in any coal association made up of coal operators in the United States?

[1669] "A Made up exclusively of coal operators?

"Q Not exclusively, but largely, the mem-

bership consisting largely of coal operators.

"A I have no connection with the National Coal Association, for example. That's the main coal association.

"Q Does Consolidated Coal Company have a membership in National Coal Association?

"A Yes.

"Q Mr. Love, I show you Consolidation Coal Company statement found in Moody's Industrial Manual for 1960, and I would like to ask that you have that checked, and any corrections that are to be made to that statement, that they be submitted to the court reporter.

"That statement was exhibited as Exhibit 1 and we would like to read excerpts from that statement."

MR. COMBS: I asked counsel the corrections that are indicated here, there were some corrections made in connection with his question. The list of corrections were submitted to the court reporter and is attached to the original exhibit, the original deposition.

Now, will your reading here reflect that correction?

MR. ROWNTREE: Yes. The Court pointed out, "So long as you follow the check list which the witness filed, or caused to be filed with the court reporter, [1670] and which he verified, I hold it is competent.

But I hold that any information that has not been checked or proved is not competent at this time."

At that time we had the verified corrected copy.

"Incorporated in Pennsylvania January 12, 1961, as Pittsburgh Coal Company, by merger of Pittsburgh Coal Company of Pennsylvania and the Monongahela River Consolidated Coal and Coke Company. Name changed to Pittsburgh Consolidation Coal Company November 23, 1945, present name adopted, 1958.

"In 1952 acquired the remaining 51 per cent interest in Jefferson Coal Company, which company was then

liquidated and its mines and properties located in Ohio are operated as part of Hanna Coal Company Division.

"On September 30, 1954, company acquired entire capital stock of—and that is corrected. That is corrected, Jamieson Coal and Coke Company.

"On December 3, 1956, acquisition of Pocahontas Fuel Company was declared effective. Pocahontas was liquidated, now operated as a division.

"Mathias Coal Company organized in 1951 and purchased from Pittsburgh Consolidation Coal—Mathias Coal Company organized in 1951 and purchased from Pittsburgh Consolidation Coal. It's Mathias Mine together with certain coal and surface lands, including
[1671] 303,675 acres of Pittsburgh Seam Coal for $15,000,000 cash and $4,300,000 mortgage payable over 15-year period, and also leases 19,000 Pittsburgh Seam coal land from Pittsburgh Consolidation Coal.

"Harmar Coal Company: Formed in June, 1952, and purchased the Harmar and Oakmont Mines. Also leased 7,000 acres. Properties were supervised by Consolidation Coal Company which owns 25 per cent interest."

MR. ROWNTREE: I do have a copy of this thing here. I would like to read it in respect to some later years.

MR. COMBS: We have no objection to that.

MR. ROWNTREE: I might say that we were cut off from this reading because a lot of this pertained to a year subsequent to the closing period of that last case.

"This is one of the largest producers of," center column at the bottom.

MR. COMBS: Now, of course, your Honor, we realize that this is Moody's Industrial Manual. Now, we are talking about a copy that I know nothing about, now, whether this is correct or not and my failure to object isn't based on that because I don't know, it simply comes

from a trade publication that he has here and, of course, the other information that was submitted in the Pennington case was submitted to this witness, to this company for correction and that isn't true of what he is read-

[1672] ing now.

THE COURT: All right.

MR. ROWNTREE: This is Moody's Industrial Manual.

"This is one of the largest producers of bituminous coal in the United States with a total productive capacity of about 39,500,000 tons annually and approximately 2,800,000,000 tons of unmined coal. This fuel is used chiefly in electric utility, general industry, steel and by-products and so forth operations.

"Reserves of recoverable coal and annual capacity as of June 30, 1956, of Pocahontas Fuel Company were 560,000,000 and 10,200,000 tons, respectively.

"A subsidiary, North Western-Hanna Fuel Company, owns and operates coal docks on Lakes Michigan and Superior and retail coal yards at Duluth, Superior, St. Paul, Minneapolis, Milwaukee, Menominee and Waukegan. Arrangement with M. A. Hanna Company distributes coal in Canada."

This paragraph on the right-hand side, third paragraph from the top.

"Pocahontas Division is engaged chiefly in mining and distribution of low volatile bituminous coal from volatile fields in Southern West Virginia and Southwestern Virginia. Division also operates two mines in high volatile field in East Tennessee."

"Properties. As of December 31, 1958,

[1673] company owned in fee, or through ownership of mining rights, approximately 260,000 acres of unmined bituminous coal, and had 27 deep mines in operation located in Pennsylvania, West Virginia and Ohio.

It also had six strip mines in Pennsylvania and Ohio. Estimated coal reserves, December 31, 1958, 2,000,800,000 tons."

Going to the production, coal production, 1955, no, starting in 1950, 27,612,766 tons; 1951, 31,170,000 tons; 1952, 29,368,000 tons; 1953, 29,937,000 tons; 1954, 24,859,000 tons, 1955, 31,248,000 tons."

There are two divisions given for 1955, this second includes Vessel Fuel and the second figure for 1955 is 40,877,000 tons, and the year after this include the Vessel Fuel.

"1956, 47,068,000 tons; 1957, 48,549,000 tons; 1958, 34,299,000 tons; 1959, 37,521,000 tons."

MR. COMBS: In order that we might keep the record straight, counsel has indicated that he was reading from the production, actually he is reading from the column of coal sold.

MR. ROWNTREE: That is correct.

MR. COMBS: These statistics show that certain portions of this were mined by lessees and certain portions of it were purchased, so it was coal sold rather than coal produced.

[1674] MR. ROWNTREE: That is correct.

MR. COMBS: So the record will be straight.

MR. ROWNTREE: They have two columns in front of this column which I read the first column, which is entitled "Produced and sold." The second column is "Purchased," and the third column, which I read, is "Total sold."

I would like to read the next column on this next part, net income across on the right, "$15,392,441 for 1953; 1954, $11,807,332; 1955, $13,966,036; 1956, $21,972,169; 1957, $26,672,722; 1958, $18,469,816; 1959, $20,522.841."

(The reading of the deposition was continued.)

"Q Mr. Love, was Consolidation Coal Company the largest commercial coal producer in the period 1954 through 1958 in the United States?

"A I think it was. I think it produced more coal than any other single company.

"Q Mr. Love, have you held positions in the years 1947 through 1950 as a representative of coal operators in dealing with the United Mine Workers?

"A Yes. In varied negotiations I represented a district or several districts in negotiations with the United Mine Workers, and cluminating in the 1949 negotiations, when I represented a group of Northern coal operators extending to West Virginia, Northern West Virginia, Pennsylvania, Ohio.

[1675] "Q And was that called the Northern Conference at that time in the 1949-50 negotiations?

"A I think it was.

"Q In that particular conference, during the latter part of it, were you the principal operator's spokesman in the conference?

"A I was known as the spokesman for the operators in that conference.

"Q In that period of time, Mr. Love, did the union conduct more than one conference over the country, to your knowledge?

"A As I recall, there was a conference going on at the same time in some other part of the country; Bluefield, I think.

"Q Was that with the Southern Coal Producers Association?

"A Yes.

"Q And did the union conduct from time to time negotiations with the captive mine operators separately from the other conferences?

"A I don't recall.

"Q Well, let me ask you this: The Northern Conference which you attended represented the largest production of coal of any of the conferences?

"A I think that's correct.

[1676] "Q Before that 1949 through 1950 conference, had you represented operators in previous negotiations with the United Mine Workers?

"A I had.

"Q Mr. Love, you had some pretty bad fights with the union in these negotiations, is that right?

"A That is correct.

"Q Will you state whether or not the United Mine Workers has exercised tremendous economic force in the coal industry in the period of your experience in dealing with them?

"A My answer is that they did exert a strong economic force.

"Q Mr. Love, will you state whether or not in your experience as a representative of operators, particularly as a representative of Consolidation Coal Company, the union exercised such strong economic force in the industry that ultimately the union was able to specify and control the policies of Consolidation Coal Company with respect to labor matters and with respect to its relationship and dealings with non-union coal companies, and small coal companies with which Consolidation dealt?

"A That's a pretty tough question."

Mr. Cocoran, who was general counsel for Consolidation Coal Company, "If I understand the

[1677] question, you were asking Mr. Love if the Mine Workers dictate the policies of the Consolidation Coal Company. Of course, they don't.

"A I will answer the question, if that is what the interrogator means. The United Mine Workers certainly

doesn't.

"Q Well, has it in any of the periods of time that you have acted as a representative in dealing with the union?

"A We negotiated with the union; we have come to agreements, parts of which are unpleasant to us, ones that we resisted. But we finally came to an agreement, and the decision to come to an agreement rested with us.

"Q Were you connected with the predecessor company of the Consolidation Coal Company during the period of World War II?

"A I think I came with Consolidation Coal Company before the merger with Pittsburgh Coal in 1945. I came with the original company in 1943.

"Q You were familiar with the coal strikes during World War II?

"A Yes.

"Q Were those strikes in which the United Mine Workers' members struck?

"A Yes.

"Q Do you recall how many of those strikes [1678] occurred in World War II?

"A No, I think the industry was taken over some five times in the '40s by the government.

"Q Because of these strikes?

"A As far as I recall."

MR. ROWNTREE: Top of 538.

"Q I refer to the minutes of the Convention of the United Mine Workers of 1952, Pages 65, et seq., a statement of Mr. John L. Lewis at the joint conference, June 23, 1949, where he stated:

""There comes up at this conference, we think, this question of some regulation of the working time, some stabilization in the industry. The Mine Workers have gazed to some degree with admitted apprehension at the

tendency of the industry to reduce their prices in the face of increasing competition. Frankly, we think the industry has been too hasty.'

And then further:

"'There has been much talk lately about a stabilization plan. Mention of it is affecting the mine workers and the operators. It has no basis of fact, and cannot be considered practicable. It is true, however, that we do have a segment of the coal industry operating under the plan that brings about a distribution of working opportunity. (Mr. Lewis then explained the plan that [1679] had been worked out in the anthracite industry.)

"'We would like to talk you in this conference on some improvements in stabilization which is a question of magnitude in the minds of the men as affecting the investment in the industry.'

"Do you recall, Mr. Love, whether or not this stabilization of the industry was a part of the negotiations?

"My question is, do you recall that this stabilization was a matter discussed at these conferences in 1949 and 1950?

"A During the 1949 and 1950 conferences, a discussion of shorter work weeks--because obviously there is a greater supply of coal or a greater ability to produce coal than the market—and the operators continued and unrelentingly resisted any interferences with their right to run their mines as many days as they saw fit. And they were successful when that contract was concluded to have the right to operate their mines as many days as they saw fit.

"Q During this period of time of these negotiations, were the mines worked a full five days a week?

"A No. There were periods of three-day weeks, no day weeks, when strikes were going on, there were three-day weeks. That's what I recall about it.

"Q Were these periods of work in the weeks set by the United Mine Workers or by the coal company?

[1680] "A Certainly not by the coal companies.

"Q And the stabilization discussion revolved around limiting working time in the coal mines during these negotiations?

"A I don't recall stabilization as such, being discussed. I think there was a lot of discussion about limiting the work time.

"Q But the reference——

"A We are hearing it now in steel; you hear it in all industries.

"Q But the conference ended up with the signing of a contract which would not limit the production time of the coal companies?

"A That is correct, beyond the limitations we had before, like a number of hours per day, and so forth."

MR. ROWNTREE: Going to 541.

"Q I refer to the minutes of the 1952 convention, Pages 81-83, a statement of Mr. George H. Love, October 14, 1949, at White Sulphur Springs, West Virginia. "Before coming to this statement to which I referred, Mr. Love, do you recall that you were trying to represent, and so stated, all of the bituminous coal operators in your various associations, whether they be large or small?

"A Well, I think you owe it to me to tell me what you mean by 'large and small operators.'

[1681] "Q Well, I will ask you what this language means here, and I quote from the statement referred to:

"'We represent many hundreds of commercial operators here, most of them relatively small, who have their backs to the wall because they have to sell their coal before it is mined. Many of them will not be able to open their mines if costs are increased by a new contract because

they know how difficult it will be to have the public pay more even this year after all the strikes, memorial periods, stabilization days, and work weeks we have been forced to endure.'

"And, 'the picture for 1950 beset with more competitive uncertainties than we have ever seen. Many operators feel the present stubborn demand by the union for improvements this year may be a parallel situation to the one which existed under the Jackson bill scale in the '20s, when a similar adamant attitude on the part of the union leaders practically destroyed both the union and the industry.'

"And, 'asked about the industry absorbing the 30-35 cents a ton increase, he said, "The industry is lucky to be breaking even. They can't share any increase in cost. Some individual companies can do it, but we represent hundreds of small commercial operators. These fellows haven't got any margin this year to absorb any increase in cost." And he said that Wetter, Manley and Cartwright all are representing medium-sized mines. He
[1682] said that he represented many small companies, that he was not speaking just for the Pittsburgh Consolidation Coal Company.'

"And, 'We have a tremendous responsibility here not to do something that Pittsburgh Consolidation can do, but something which these hundreds of other operators can afford.'"

MR. ROWNTREE: We ask, your Honor, that these statements go into the record under our stipulation that that matter is contained in the minutes of the UMWA and may go into the record.

THE COURT: Very well.

MR. ROWNTREE: Is that all right?

MR. COMBS: Yes.

MR. ROWNTREE: These are statements of Mr. George

H. Love.

"Referring to those statements contained in this statement of October 14, 1949, were these matters things which affected you in your negotiations with the union in that period of time?

"A Well, let me explain to you, because you seem to be talking about small operators as opposed to a little larger ones, that for all practical purposes there are no large companies in the coal business.

"The single companies in the oil industry, for [1683] example, earn three or four times as much as the whole coal industry. This is a fragmentary business, relatively, some mine a little bit more, and some mine a little bit less.

"Now, to go on, and being spokesman for the Northern Conference, you were spokesman for all the operators. You weren't spokesman for Western Pennsylvania as opposed to Ohio. You weren't spokesman for companies mining a million tons as opposed to those mining 50,000 tons. You were spokesman for the whole group of operators, and, therefore, you had to have, if you were going to do your job, you had to have the welfare of the group in mind.

"I might add that what is good for a slightly larger company is generally good for the smaller ones. And if you have an industry where the relatively smaller companies are in difficulties, the larger companies will be in difficulty too.

"What you are looking for when you are a negotiator is to actually and honestly represent everybody that's part of your conference and that includes operators in thin seams and thick seams, and various geographical districts.

"Q Will you state whether or not you had in mind that it would be more difficult for the small operators, as you refer to them here, to pay any increase in the scale, in the Welfare Fund, than it would be for the large operators,

such as Pittsburgh Consolidation Coal Company?

"A I don't think you can differentiate by
[1684] size. There were smaller operators who could pay a change in wages a great deal better than a large company. There were larger companies in trouble, and there were smaller companies in trouble.

"To be perfectly honest, I think that the smaller company with tight management that has flexibility without overhead of the large one, could in many instances be in many instances be in better shape to pay a wage increase than so-called larger companies.

"There are all sorts of gradations when you have an industry as competitive and as fragmentary as we are. Poverty wasn't restricted to the smaller ones.

"Q Will you state whether or not that was a problem in your mind?

"A Regardless of the statement, I feel that my interest was the ability of any coal operator to pay any wage increase in the year 1950, any operator.

"Q But the contract of 1950 was signed with the increase in it?

"A That's right.

"Q Will you state whether or not you had in your mind a concern for the growth of non-union coal operators at that time?

"A I think that all of us, and particularly
[1685] Consolidation Coal or any other operator, has concern for the possibility of his neighbor or someone paying a smaller wage scale, a lower wage scale. I don't think it's controlling in this particular negotiations.

"Q There was a growth in the production of non-union mines in this period?

"A I don't recall.

"Q I will quote from this statement which I have

just quoted from before:

"'He was asked about the volume of non-union coal. He said it was about 25 per cent of production in the Northern districts, and added that there was a big volume of non-union coal in the Midwest. He said the progressive miners and non-union mines in Western Kentucky mined about two million tons of coal a year.'

"Does that recall to you that you were concerned about that production at that time?

"A I should think running a coal company we would always be concerned about some competitors that could pay a lower wage scale than you could. I think that is a perfectly proper concern.

"Q Do you recall how the operators came to sign that 1950 contract? Was there an incident that prompted them to sign more than anything else? And I will ask you whether or not you recall a decision of the Dis-
[1686] trict Court in Washington concerning a contempt charge brought against the union?

"A I don't recall. As I do remember is that there was finally willingness on the union to negotiate the economic part of a contract, and it was our best judgment to conclude the contract and stop losing coal fields to other fuels.

"Q And the thing that the union gave up, will you state whether or not that was the policy of dictating the working time in the industry?

"A They gave us the right to run our own mines, and that was a very important economic consideration, alorg with other things which I can't recall.

"Q I refer to a statement in the 1952 convention minutes of the union, Pages 125 and 126 of Mr. George H. Love, following the signing of the National Bituminous Coal Wage Agreement in 1950, among other things quoting:

"'We have had a good fight, but we are all glad it is over. This two and a half year contract gives the industry its first real opportunity for stability in the last decade.

"'Both the union and the operators made concessions. The operators definitely established the right to control their production in their mining facilities.

"'The union asked for a cooperative adminis-
[1687] tration of the Welfare Fund, and we are giving it to them. We will help every way possible to make this huge fund a definite credit and benefit to the industry, however the responsibility is squarely on the shoulders of the union, and if it fails, the public and ourselves will look directly at the union.'"

Then he goes further to say that:

"'This country is one of the few where coal mining is still in private hands operating under a free enterprise system. It carried the country's enormous needs during the war and since without government help or subsidy. It is a modern aggressive industry with three to six times the productivity of the coal industry than any other country, and we are going to do better than that.'

"Do you recall that statement, Mr. Love?

"A Not in detail, but in principal."

MR. COMBS: There is one thing I would like to point out to the Court and counsel that if counsel doesn't mind while that was read from the convention minutes it was a press conference, it was not at the convention, it was not made to the convention.

MR. ROWNTREE: That is correct.

MR. CHAMBLISS: May I finish his answer?

"I never attended a convention of the United Mine Workers in my life."

MR. ROWNTREE: But his statement was.

[1688] (The reading of the deposition was continued.)

"Q Consolidation Coal Company, has it had

any serious strikes since the 1950 contract?

"A Yes, it has had some very serious local strikes in the last ten years.

"Q I would like to ask you, Mr. Love, if you could file as Exhibit 2 to this deposition the prospectus of Consolidation Coal Company, October 24, 1956, concerning the issuance of 2,678,897 shares of common stock for the Pocahontas Fuel Company Exchange.

"I am quoting from that prospectus:

"'There has been no general strike in the bituminous coal industry since March, 1950. The company has experienced no major material work stoppages or unusual labor difficulties since that date, with the exception of unauthorized work stoppages at its mines in Northern West Virginia during portions of the months of April, May and June, 1956, which decreased the company's production by approximately 850,000 tons during that period.

"'Effective October 1, 1956, a new wage agreement was signed with the United Mine Workers of America. This agreement provides for an immediate wage increase of $1.20 per day and an additional increase, effective April 1, 1957, of 80 cents per day, as well as for certain fringe benefits. The new agreement is expressly
[1689] not subject to termination prior to September 30, 1957, but after that date may be terminated by either party on 60 days' notice to the other. To cover the increased labor costs arising from the October 1st wage increase and the accrued increases in material and supply costs, the company has made increases of approximately 40 cents per ton in its prices. Other companies have also increased their coal prices. While the increases have been in effect to too short a period to permit a definite estimate as to their ultimate effect on

the position of the coal industry, the company does not believe that under presently existing conditions they will materially affect its ability to market its product.'

"Mr. Love, is that statement true and correct?

"A If we put it in the prospectus, it must be true and correct. Whether that's an actual quotation of it, I don't know. But whatever is in the prospectus, I will take it as being so.

"MR. ROWNTREE: And that statement was filed with the prospectus."

"Q The substance of the statement is true; is that correct?

"A I will say what I did, if this is a proper reading of the statement in the prospectus, I know it's correct. Now, whether it is or not, I am not prepared to say.

But I repeat that we did have work stoppages during
[1690] this period, and continued to have them after that date, of a serious local nature.

"Q And those were unauthorized work stoppages, as you call them?

"A We used that word. And by unauthorized, I don't quite know what that means, whether unauthorized by the local or by the district, or by the national. Perhaps the word is a little unfortunate.

"But we have had serious local work stoppages."

* * *

[1837] MR. ROWNTREE: Deposition of Albert B. Hill, and this one we have no date on it. Yes, up at the top, Albert Hill, taken at Hazzard, Kentucky, on the 18th of November, 1960.

## ALBERT B. HILL

### DIRECT EXAMINATION

"Q What is your name, sir?

"A Albert B. Hill.

"Q Where do you live, Mr. Hill?

"A Pineville, Kentucky.

"Q In 1958, were you president of Black Star Coal Company?

"A Fifty-eight, year and a half ago. Listen, I will say I was. It was so close that I can't—it took effect in December. It took effect, I will say, on January 1st last year.

"Q 1959?

"A That's right.

"Q By 'taking effect' you mean that someone succeeded you as president of Black Star Company?

"A Correct, and Black Star went out of existence.

"Q What kind of business was Black Star Coal Company in?

"A Coal mining and sales.

"Q Did it also own coal lands leased out to [1838] others to operate coal mining?

"A Yes, it did.

"Q Operations on it? Where were those properties located?

"A In Clay County, in Wilton, right below Corbin. Can't think of the name of the—Clay County, primarily. Clay County and Leslie, just below—let me see, let me give you that in just a second. It's just passed my mind, that's all, and I know it as well as I know my own name. It's the same county that Barbourville is in.

"Q Knox County?

"A Knox County, I couldn't think of it. That's correct.

"Q I believe the Knox County property was called Wilton or Corbin tract.

"A Correct.

"Q And you also had property in Leslie County?

"A In Leslie County and in Clay.

"Q How many acres were in those two areas?

"A May I bring this word in? When that was, the way that was handled as of January 1st, Black Star went out of existence, and then this new corporation, Black Star Company, was formed as a sales agent. What was your question?

"Q Do you recall how many acres old Black Star had?

"A Old Black Star?

[1839] "Q Yes, sir; yes, sir.

"A Wait a minute—about 16,000 acres.

"Q In both counties combined?

"A In both counties, and this Wilton property.

"Q Did Black Star, the old corporation, have property in West Kentucky?

"A No.

"Q Did old Black Star have a coal mining operation?

"A They did.

"Q Where was that?

"A That was at Alva, Kentucky.

"Q Do you recall what county that is?

"A Harlan County.

"Q What kind of a mine was that?

"A It's a deep mine, mechanical loading, hand-loading, all forms of mining underground, except auger.

"Q Was there any stripping?

"A Yes, there was some stripping. Wait a minute, we did a little augering, too. That's on a lease contract, though.

"Q And that mine was operated by old Black Star Coal Company?

"A Correct.

"Q Now, was Black Star Coal Company purchased by anyone?

[1840] "A Yes, it was.

"Q Who purchased it?

"A I knew this was going to get into that. I just can't tell you, gentlemen, I just don't know the details of that entire transaction.

"Q Who succeeded you as president?

"A Clarence A. Lee, Sr.

"Q Is he a resident of Alabama, before that time was he a resident?

"A He was at that time, and still is.

"Q Do you know if that company that bought old Black Star was the Marigold Coal Company?

"A I can't tell you just how it was worked out. I never asked and was never told.

"Q Do you know if Peabody Coal Company had an interest in or owned the company of Mr. Clarence J. Lee?

"A Clarence A. Lee?

"Q Clarence A. Lee.

"A I don't know.

"Q Now, was a new corporation formed called Black Star Coal Company?

"A Yes.

"Q And that's the company that Mr. Clarence A. Lee became president of?

"A Yes.

[1841] "Q Did all of the properties of old Black Star Coal Company come under this new Black Star Coal Company? Did all of the properties of old Black Star come under the new corporation?

"A All that was left.

"Q And what was left?

"A Black Star, I mean Alva, Kentucky. That's the original Black Star Coal Corporation.

"Q What became of the coal lands in Wilton area, Knox County and Leslie County?

"A We still own them. Mr. Lee still owns them.

"Q That's the new corporation?

"A No, sir, that's not right. The Black Star, the old Black Star Coal Corporation was formed as a sales agency altogether, and they—they do not own and as far as I know did not own any part of Alva. After it was sold to interests that I cannot—I just can't tell you who they are because I don't know.

"Q Did the name of the company that owned the Alva Coal Mine after this transaction change its name?

"A Yes.

"Q What did they——

"A Alva Coal Company, Alva Coal Company or Alva Coal Company, I think it was.

"Q Was Mr. H. C. McCollum president of [1842] that company?

"A Gentlemen, I would say I think he was. I am not absolutely positive of that.

"Q Did you have an office in that new company?

"A I did, I did.

"Q What was your office?

"A Executive vice president.

"Q Who was president?

"A I am going to come back and tell you McCollum was, but I have never seen that in black and white.

"Q And Mr. H. C. McCollum is vice president of Peabody Coal Company?

"A That's correct.

"Q And did Alva Coal Company also own these tracts of land over in Leslie and Knox County?

"A They owned, they owned a sizable acreage bordering on the Harlan County line, in that portion.

"Q And that's the property that old Black Star Coal Company used to own?

"A That's right.

"Q Did the, is the Alva Coal Mine in Harlan still in operation?

"A No, sir.

"Q When did it close?

"A Approximately three months ago.

"Q Why did it close down?

[1843] "A Inability to mine profitably, and they will tell you running out of coal. I don't tell you that because they have got coal.

"Q Are you still connected with Alva Coal Company?

"A I am not.

"Q Mr. Hill, back under the old Black Star Coal Company in the period of 1956, did Osborne Mining Company make an effort to lease land from Black Star Coal Company in that period of time?

"A Well, I can't say exactly at that time, but in the neighborhood, but approximately the same time we leased property to Osborne.

"Q Osborne Mining Company was a non-union operation?

"A It was.

"Q Were negotiations carried on?

"A Oh, yes, we were negotiating with Osborne during the entire time he had the property. Then he sub-leased or he sold out to Callahan.

"Q And then they made an effort to come back on that property, is that right?

"A I don't recall that. I know this, he would like very much to.

"Q Well, you did have some negotiations with Osborne Mining Company?

[1844] "A Yes.

"Q With respect to their coming back on the property?

"A Yes, I would say that we did. Now, gentlemen, that's a long time ago and when I make a statement like that, it's to the best of my knowledge.

"Q Will you state whether or not a lease form was drawn up to lease that property to Osborne Mining Company?

"A Mr. Rowntree, I would have to just, to refer to the records before I could answer that question. If you want the best that I recall, I will give it to you.

"Q All right, sir.

"A I think it was. But that would have to be sustained by the records in Louisville, Kentucky."

MR. COMBS: At this time, if your Honor pleases, we object to any further testimony on that lease business. He said that he didn't know, that it was in the records of the company and we submit that this is not the best evidence of that lease and we object to it.

MR. ROWNTREE: We are not trying to prove the lease, your Honor. We want to know why the lease was not executed and he answered that in the next question.

THE COURT: Overrule the objection.

"Q Now, why was that lease not executed?

"A I just don't remember the details, we just couldn't get together. That's going way back, gentlemen.

"Q Can you state whether or not this lease [1845] was refused by you?

"A If it is confirmed that that lease existed, then it would have been refused by me because I would have handled it.

"Q Do you recall that you testified about the subject before in a case?

"A I remember quite well.

"Q And do you remember the reason you stated at that time why that lease was rejected by you?

"A I couldn't tell you offhand.

"Q Are you acquainted with Mr. John L. Lewis?

"A Yes, sir."

MR. COMBS: Before we go off of that subject, now the witness has shown he knows nothing about this. I move to strike that part of the evidence concerning this lease.

THE COURT: Well, he said he knew nothing about it. Rather than strike it we will take it for what he says, that is, he knows nothing about it.

MR. COMBS: All right.

(The reading of the deposition was continued.)

"Q Have you had conversations with him?

"A I certainly have.

"Q On what occasion?

"A On renewal of contracts.

"Q Was Black Star Coal Company, was it [1846] a member of any coal association?

"A It was not a member of the Harlan County Association, therefore, we negotiated our own contracts.

"Q Directly with the United Mine Workers' officers?

"A Yes, sir.

"Q Will you state whether or not you carried on these negotiations each time a new contract came out?

"A Yes.

"Q Now, with respect to the old Black Star properties in Knox and Leslie County, will you state whether or not there were non-union operators on those properties under lease from Black Star?

"A They were non-union operators.

"Q Did any question arise between you and Mr. Lewis on any of these contract negotiations with respect to non-union leases?

"A Yes, it was certainly discussed, and that's the reason I went to Washington and had a very definite and clear understanding with Mr. Lewis, and I must say that he lived up to it 100 per cent.

"Q Did you live up to it 100 per cent?

"A Yes, sir, I sure did."

MR. ROWNTREE: To page 679. We introduced a contract of the National Bituminous Coal Wage

[1847] Agreement there and the question under that was:

"Q What was this understanding?

"A When I went to Washington, D. C., at first we had six or eight, no, we had about twelve or fourteen leases, and I told Mr. Lewis that one requirement, that we held and we would not do otherwise, was the fact that those fourteen leases were under contract. Mr. Lewis—but I agreed, during the life of the contract, we would not negotiate another lease on our properties unless it was with union labor. We lived up to that literally.

"And another time I went to see Mr. Lewis, I told him that the conditions were such that I had no alternative but to go into this adjoining territory at Hayden and make leases. And I frankly stated that we were going to make those leases regardless because it meant our life and business. And Mr. Lewis discussed it at length, of course. He tried to talk me out of it, but he couldn't, and so finally we agreed on a gentlemen's agreement, nothing in writing, that we would continue on that basis, and that's the way it's been.

"Q Were the two trips you made to Washington about this matter?

"A It was about renewal of the new contract.

"Q In other words, the trips were at different times?

"A Yes, sir.

[1848] "Q At different contract negotiation periods?

"A Right.

"Q Do you recall when the first trip was?

"A This last contract, I had nothing to do with it, that was signed, it was signed in Saint Louis. But the two previous contract periods were the two that I have reference to.

"Q I have here, Mr. Hill, copy of National Bituminous Coal Wage Agreement of 1950, effective March 5, 1950, with amendment of January 18, 1951, effective February 1, 1951; also the amendment of December 29, 1952, effective October 1, 1952; and the amendment of September 1, 1955, effective as of that date; the amendment of October 1, 1956, effective as of that date.

"Now, looking at these, you can tell me which two contract periods you were talking about there with respect to these trips to Washington?

"A I made the statement I had been there twice. It is entirely possible I was there three times. It was up to me to negotiate the contracts.

"Q Yes.

"A Now, with all the contracts that have come up over the past, I don't know, 10 to 15 years, I have set in on those, and I have negotiated with the union, [1849] except this last one, and that contract was signed in December in the offices of Peabody Coal Company. I was not in on that; I did not go to Washington.

"Q Was that the one with respect to the Alva Coal Company?

"A That's right.

"Q Were the two conversations you had with Mr. Lewis with respect to these Kentucky lands, were they concerned with a specific provision of the National Bituminous Coal Wage Agreement as amended?

"A If I understand you correctly, the discussion I had with Mr. Lewis was a renewal of the existing contract, with the additions that they added on to it, and that was

the case every time I went up there. I don't know if I understood you correctly.

"Q I will show you a provision here in the amendment of 1952. You will note that's September 29, 1952.

"A 1952.

"Q Amendment has this provision over here on Page 3, captioned 'Application of contract to coal lands.' Did that—state whether or not that particular provision had something to do with your discussions with Mr. Lewis?

"A Yes, sir, that was the clause that got me to go to Washington.

"Q And then that contract amendment came [1850] out, did that lead to the Washington trip?

"A Mr. Lewis, we discussed that, and he says, if that's your interpretation of it, then that's the agreement we will abide with, as far as you are concerned. But that did not mean he would go to John Jones and give the same contract. That's the way I took it.

"Q Will you state why this interpretation you had was not put in writing between you and Mr. Lewis?

"A No contract that I had with Mr. Lewis, outside of the National contract, there's nothing been put in writing with Mr. Lewis. Now, frankly, I didn't want it and he didn't want it. It was a gentlemen's agreement that was abided by.

"Q Was there any difference between you at the outset with respect to the interpretation?

"A Yes, they didn't think we ought to make any leases, and we said we were going to make leases, but we did not make any leases that was adjoining a part of our main boundary of coal. In other words, a part of Black Star, we made no lease because we felt it was a part of the contract, that was our interpretation.

"Q Were these discussions at some length or did you just state your position?

"A We—it was a round-robin discussion.

"Q Of some length?

[1851] "A Yes, sir.

"Q Did you discuss the leases that you were wanting to make?

"A Yes, sir, it was all the lease we had in effect and two more that I had given my word on that we would close I said, 'We are going to close those two mortgages.'

"Q Those two leases?

"A Those two leases, and we did.

"Q And you had already made an agreement with the proposed lessees?

"A Verbal agreement.

"Q What was the final decision then?

"A Mr. Lewis said, 'If that's your interpretation, we will accept it, as far as your case is concerned.'

"Q And the problem was, was that these proposed lessees were non-union operators?

"Will you state what was the specific problem? State whether or not it related to whether or not these operators were union or non-union.

"A Sure it was. That was the main consideration there, that these non-union operators wanted to continue, and we made the leases to the non-union operators. And we had signed contracts, and we had made verbal promises that we were going to abide by. Mr. Lewis knew that and

[1852] he acquiesced and told me, I repeat, that if that was our interpretation, that would be the interpretation for our particular contract.

"Q Now, on the next contract negotiating period, did you go back to Mr. Lewis again?

"A Yes, sir.

"Q Was that——

"A That was around '56, something like that.

"Q That next one here, I believe, September 1, 1955?

"A It was the next regular contract.

"Q And on this next trip to Mr. Lewis, did you have leases in mind at that time?

"A Yes, sir.

"Q Of non-union operators?

"A Definitely.

"Q And did you discuss those specific leases with Mr. Lewis?

"A I did. Gentlemen, it's the regular contract. Now, I don't want to go out on a limb. I am not positive on that. But every contract that was signed by Black Star over all those years, I had signed. The union would not accept even my plant manager's signature. I had to make special trips over to Middlesboro, then. What we have been talking about, it was the first 12 or 14, plus 2 that I had given my verbal assurance that we would sign. Then we went back on this new contract when it was to be decided and that was a boundary of coal which was what [1853] we call the heart of our whole proposition. I went over and told him we had to make leases on that coal or go out of business and in the final analysis, Mr. Lewis agreed with me for me to go ahead. I could tell you something else, but it's personal.

"Q And that was true on both of those two trips?

"A Yes, sir. Mr. Lewis agreed I would add an unnamed number of leases on this new property. On the last trip. And Mr. Lewis agreed, we would go ahead. I even talked to him about sending, sending one of his representatives to Louisville. I said, 'I will open my books, where you can see everything there is to see.' He never did. He appreciated the offer of them.

"Q What leases were talked about on that second trip?

"A They hadn't been formed yet, but in the end they were the Liberty Coal Company, the Carrie Lou Coal

Company, the Deby Coal Company, the Kentucky Mountain Coal Company, Citation Coal Company and Black Gem Coal Company. Gentlemen, there may be one or two others, but those were the main ones.

"Q Did you talk to Mr. Lewis about these companies?

"A I talked to him about the companies that were to be formed and the leases that were to be made. No names were given.

"Q And Mr. Lewis agreed to those?

[1854] "A Yes, sir, he did.

"Q Mr. Hill, why did you feel compelled to go to talk to Mr. Lewis about these matters?

"A To get these contracts, and the only way we could do was to lay the matter on the table with Mr. Lewis, and I did just as frankly and sincerely as I knew how.

"Q And he appreciated your sincerity?

"A He certainly did.

"Q And you abided by your agreement?

"A I certainly did.

"Q And you did not make any other leases?

"A No, sir. Wait a minute, on this last trip, I made, I may be one or two short, but I gave you the main ones.

"Q But you did not make any leases except those Mr. Lewis agreed to?

"A No, not while that contract was in effect.

"Q What is your position now, Mr. Hill?

"A I am the personal representative of Mr. Clarence Lee and Mr. Clarence A. Lee, Jr., in full control of all his property over here now, owned by Mr. Lee."

MR. ROWNTREE: That's all that deposition. We go to——

MR. COMBS: (Interposing) There is some cross. This is the cross-examination of Mr. Hill.

[1855] CROSS-EXAMINATION

(Mr. Combs read the questions and Mr. Chambliss the answers.)

"Q Mr. Hill, at the time you went to Washington that you are talking about, who went with you?

"A Mr. B. F. Reed.

"Q Who was your counsel at that time?

"A Judge Dawson.

"Q Judge Dawson?

"A Yes."

MR. COMBS: I might say, your Honor, Judge Dawson was a federal judge over in Kentucky at that time, an ex-federal judge.

"Q And you talked to him about this before you went?

"A Oh, yes.

"Q Mr. Rowntree was asking you about the renewal of these contracts. I think you said you had personally signed each of the contracts since about 1952?

"A I think I had.

"Q You don't mean to say you went to Washington?

"A No, sir; no, sir.

"Q You negotiated your contracts usually in the District office, you signed the contract and it was sent in to Washington?

"A Yes, sir.

[1856] "Q The two trips you went to Washington was with reference to the leasing proposition?

"A Yes, sir, and the new contract.

"Q Do you recall who was present with Mr. Lewis?

"A You and Mr. Hauk.

"Q Anyone else?

"A Mr. Reed. Of course, he was with me. Mr. Lewis, and there was one young man that I can't recall his name. If you call it I will remember it.

"Q Mr. Willard Owens?

"A Mr. Owens was out there on one of them. He's the one that's president now. He was in one of those meetings.

"Q Now, Mr. Hill, in order to get this picture very clear, at the time you went to talk to Mr. Lewis, your mine that was operating, was not operating under the new contract at that time?

"A That's right, it hadn't expired yet.

"Q The question was whether you were going to sign the new contract or amended contract?

"A That's right.

"Q And the discussion you had there with reference to the leases on your producing property was one more legal in nature than it was a bargaining proposition, was it not?

"A I don't know that I understand you.

[1857] "Q Had you not been advised by your counsel, Judge Dawson, did you not say to Mr. Lewis that you were legally obligated on the leases that were in existence at that time?

"A Yes, sir.

"Q That they had some time to run?

"A Yes, sir.

"Q And that you could not legally——

"A We could not legally get out of them and we wouldn't if we could.

"Q And you further said that you had two leases promised that had not been executed?

"A Yes, sir.

"Q And you felt morally bound because there was a verbal agreement that they would be carried out?

"A Correct.

"Q So it was a legal proposition with reference to

the producing company's mine?

"A Yes.

"Q That Mr. Lewis agreed to?

"A Yes, sir.

"Q That was the interpretation, I believe, both of Mr. Lewis' counsel and your counsel?

"A I don't see anything wrong in that.

"Q When you were talking about the leases in Clay and Leslie Counties, you were not talking in [1858] terms of your company operating mines on it's properties, were you?

"A No, sir.

"Q I believe you told Mr. Lewis at that time that your company's stockholders who owned that property, that that was the only way they could get income from the property was by leasing?

"A That's right.

"Q And the only people you could lease it to, that wanted the property, was non-union operators?

"A Everything in that field was non-union.

"Q And the people you would lease that to had not been under contract?

"A That's right.

"Q And the agreement with Mr. Lewis was that you had not negotiated, and had not been negotiating with reference to your producing companies for the property in Clay and Leslie Counties?

"A I was referring to Alva as the main one.

"Q That's right. And you did not think that the contract covered or should cover or would cover the property that your company was not producing coal on?

"A That's right. But if we had property, and we did, if we had property adjoining our main boundary we felt this contract——

[1859] "Q Would come under that contract?

"A That's right. And we would not sign it without that definite understanding.

"Q In other words, you are talking about this contract here, and the contingency of the lands on that property?

"A Right.

"Q Now, you were speaking in terms of agreements and understandings that you and Mr. Lewis had that had to do with your interpretations of the legal situation that existed at that time, of the leases on the company's property. It wasn't an agreement at all, it was just a recognition, wasn't it?

"A It was permission, if you want to use that word, that he was agreeable that we go ahead and make these additional leases or make these leases.

"Q I think both of us mean the same thing. The question before you and Mr. Lewis at that time was whether or not you would sign this new contract?

"A That's right.

"Q Now, you wanted to know, before you signed that contract, whether it was his interpretation, understanding, that it would cover these other properties?

"A That's right.

"Q And from the reasons stated, from the legal proposition stated, he would recognize the fact that it did not cover the pre-existing leases and properties

[1860] that were not adjacent to this property?

"A He said he would go along on a gentlemen's agreement that these lease would be acceptable, that I would have no difficulty and I have never had one minute's trouble.

"Q That was in case you signed the contract?

"A I told him if my understanding was the same as his, or his the same as mine, I was ready to sign the contract. And I did, I went into the next office and signed

the contract.

"Q Now, the second trip was about the same, about the same circumstances?

"A The second trip was on leases that had not been made and it was on territory that I told Mr. Lewis we would not make leases on. The first trip was over, was when 14 or 15 leases already signed, and two to be added. Now, when I got over here, that's on this new territory. I hadn't even approached it to anybody, but I told him we were going to close leases on that property, and he agreed that I do it.

"Q But your company did not operate that property?

"A No, sir.

"Q And didn't intend to?

"A No, sir.

"Q And you never operated it?

"A We never operated it.

"Q It was just a question of leasing lands [1861] that your company was not going to operate on?

"A That's right. That clause comes into it. That was my interpretation, and I would have closed Black Star had we not agreed.

"Q And this was consistent with the advice of your counsel, Judge Dawson?

"A Yes, sir.

* * *

**[End of Volume I]**